INTERNATIONAL POLICE COOPERATION

AS A RESPONSE TO TRANSNATIONAL ORGANIZED CRIME IN EUROPE:

IMPROVEMENTS IN EXTRADITION

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International criminality has been a challenging phenomenon for national police forces for years. States have developed international police cooperation relations and extradition instruments in order to fight international criminal activity.

This treatise explores the reasons for the rise in transnational organized crime activities in Europe and presents an in-depth explanation concerning the emergence, mandates, and structures of multilateral police collaboration systems such as Interpol, Trevi, Schengen, and Europol. Since the extradition has become an inseparable part of international policing, this study examines the improvements in extradition procedure and emphasizes the importance of extradition. Finally this study compares traditional (European Convention on Extradition of 1957) and new (European Arrest Warrant) extradition systems.

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ABBREViATIONS

ASF - Automated Search Facility

BKA - Bundeskriminalamt

CSIS - Central Schengen Information System

EAW - European Arrest Warrant

EDU - European Drugs Unit

ETA - Euskadi ta Askatasuna (Basque Fatherland and Liberty)

EU - European Union

FIS - Fugitive Investigation Support Sub-Directorate

ICPC - International Criminal Police Commission

ICPO - International Criminal Police Organization

IRA - Irish Republican Army

JAC - Joint Audit Committee

JSA - Schengen Joint Supervisory Authority

NCB - National Central Bureau

NSIS - National Schengen Information System

OC - Organized Crime

PKK - Partiya Karkeran Kurdistan (Kurdistan Worker's Party)

RCMP - Royal Canadian Mounted Police

SDP - Strategic Development Plan

SIRENE - Supplementary Information Request at the National Entries

SIS - Schengen Information System

TECS - The Europol Computer System

TEU - Treaty on European Union

TOC - Transnational Organized Crime

TREVI - Terrorism, Radicalism, Extremism, and Violence International

UN - United Nations

UNT - University of North Texas

WWI - World War I

WWII - World War II

CHAPTER 1

INTRODUCTION AND OVERVIEW

Introduction

Globalization and growing economic interdependence have encouraged and promoted the transformation of crime beyond borders in all parts of the world (Moore, 1996). Improved communications and information technologies, greater mobility of people, goods and services across countries, and the emergence of a globalized economy have moved crime further away from its domestic base (Carter, 1997; Klosek, 1999). Also, the collapse of the old regimes in Russia and Yugoslavia and then the imminent enlargement of the European Union (EU), to include former communist states in Eastern and Central Europe, have exposed European countries to relatively more serious transnational organized crime (TOC) threats than any other country in the world.

The chaos ensuing in many states of the Eastern Bloc after the collapse of the Berlin Wall created fertile conditions for the proliferation of transnational criminal enterprises (Stanislawski, 2004). As poverty spread and the state institutions lacked resources in Eastern and Central Europe, organized criminal groups steadily became more powerful. Also the integration process in the EU and the Single Market approach have allowed the free movement of persons and goods within the EU, thereby providing plentiful opportunities for criminal networks to expand their business activities westward (Den Boer & Walker, 1993; Kok, 2003). According to Nozina (2003), organized crime (OC) reached alarming levels by the end of the 1990s in Europe, and these groups are

engaged in a vast range of criminal activities, such as car thefts, robberies, racketeering, burglaries, illegal gambling, white-collar crime, organized prostitution, drugs, weapons, and nuclear materials trafficking. Today, it is clear that the rise of the TOC in Europe affects many aspects of daily life, security, economic life and the overall development of Europe.

It is a fact that the permeable borders and huge illicit market opportunities attract TOC groups and lead them to engage in transnational criminal activities (Williams, 1994). As a result of the involvement of transnational elements in crime, the successful prosecution of organized crime has become more difficult. National police forces need three basic elements to immobilize criminals: information, evidence, and the identified criminal. However, the increase in criminality on an international scale has made it less likely that all three elements will co-exist within the same national jurisdiction. For that reason, many countries have acknowledged that the world-wide nature of the TOC problem requires international cooperation at the legislative, judicial and executive levels (Moore, 1996).

The Tool of Extradition

Extradition is the surrender of an accused criminal suspect or a sentenced person by one state to the jurisdiction of another state. Extradition as a method of international judicial assistance has been practiced for centuries and its roots go back to the medieval societies where it was used as a matter of good will and courtesy between states (Rebane, 1996). Extradition has become an inseparable part of international police cooperation. The levels of police cooperation, as emphasized by Klosek (1999), depend on the continued improvements of judicial and legal matters. In order to combat

international criminality, international police cooperation systems and their national branches focus much of their resources on locating and arresting international fugitives with a view to extradition. However, there are some serious limitations in traditional extradition procedures. Policies such as, political intervention, double criminality principle, and non-extradition for political crimes, weakens and impairs the efficiency of international police cooperation.

Though extradition is exclusively a judicial matter by nature, political intervention is embedded in the process. The courts usually establish the admissibility of the extradition request in legal terms but the final decision concerning the actual surrender is left up to administrative organs. The presence of political interference in extradition matters has become particularly evident in the extradition requests for high profile criminals. These include such people as heads of terror organizations or leaders of OC groups. Under the external pressure, the courts will often create “interesting” pretexts for the refusal of extradition requests for such criminals. Because capturing and prosecuting the key persons in OC groups and terror organizations is obviously very important to the destruction of the criminal organizations, this negative political intervention makes international police cooperation efforts extremely frustrating.

Non-extradition for political offenses is another barrier for international police cooperation that is applied by many states as a mandatory ground for refusal of extradition. Although some international conventions prohibit defining some serious offences, such as aircraft hijackings, as political offence, ultimately, it is still up to the states to define the conduct upon which the extradition request is based. There is no

single way to determine whether the decision denying an extradition request is arbitrary or not.

The importance of extradition mechanism and the persistent problems inherent in traditional extradition procedure, which are discussed in Chapter Four in depth, have been identified by the EU member states. Since the emergence of TOC phenomenon in Europe, the EU member states have taken a number of serious steps in an attempt to fight the TOC including fundamental changes in the extradition process.

In December 1991, the EU decided to establish a European Police Office (Europol). This was done in accordance with the Article K.1.9 of Treaty on European Union to prevent and combat terrorism, illicit drug trafficking, and other serious forms of international crime.

In March 1995, the Schengen Information System (SIS) became operational among Germany, France, the Netherlands, Belgium, Luxembourg, Spain, and Portugal. SIS was designed to promote cooperation, particularly in the struggle with organized crime and terrorism. This was done in part because of the belief that the abolition of internal borders and loose external borders had inadvertently resulted in the support of drug trafficking, terrorism, and illegal immigration activities (Klosek, 1999; Moore, 1996).

In June 2002, the Council of the EU adopted the “Framework Decision on the European arrest warrant and the surrender procedures between the Member States” which has changed the traditional extradition procedure to a great degree and has facilitated the surrender of criminals (Council of the EU, 2002).

With the Council Decision of April 29, 2004, the EU also adopted the “UN Convention against Transnational Organized Crime of 2000” which was designed to provide the necessary legal framework for international cooperation.

In this study, the researcher first explores and discusses the TOC phenomenon in Europe and the international police institutions and groups that have been formed in response to TOC. Secondly, the existing extradition instruments, which are vital tools for international cooperation in the struggle against TOC, are also explored and compared.

Research Issues

The main purpose of this study is to emphasize the importance of workable extradition instruments to fight TOC in Europe more successfully. For a comprehensive understanding of the significance of extradition, the researcher provides detailed information about the TOC phenomenon in Europe and the major international police cooperation efforts that are involved in the fight against TOC in Europe.

The researcher has one primary research question; “How to strengthen the policing efforts to effectively struggle with TOC in Europe?” In order to address this primary question, the researcher has identified the following analysis questions:

1- What are the major reasons for the rise of the TOC in Europe?

2- What international police cooperation efforts exist to deal with the TOC?

3- How can methods of extradition be improved in order to combat TOC in Europe?

Overview of Following Chapters

This study consists of five chapters. Chapter One provides a general outline of international criminality and the TOC in Europe. It states the importance of international cooperation, articulates effective extradition mechanisms, and provides some examples

indicative of how the EU has responded to the TOC threat and international criminality in general. This chapter also touches upon the research issues and presents an overview of the following chapters.

Chapter Two contains three sections. The first section provides a definition of TOC and an overview of the main dominant OC groups from outside the EU, with the exception of Italian OC groups. The section then examines the reasons behind the rise of TOC in Europe. These include issues such as the end of the Cold War, abolition of internal borders, globalization, increased economic activities, immigration, and ethnic conflicts. There is also a discussion about basic OC activities and their impacts.

In the second section, the evolution of international police cooperation and the role of Interpol are explored. This section provides detailed information about the early international police cooperation efforts and the history of Interpol. It explains the structure, mandates, and activities of Interpol as well as how it has approached political and terror related offences.

The third section explains police cooperation efforts within the EU and provides details concerning Trevi (Terrorism, Radicalism, Extremism, and International Violence), the Schengen Group, and Europol, in terms of their emergence, structure, mandates, and activities.

In Chapter Three, the purpose of this research, the research questions, methodology, and the limitations are explained. The goals of this research are (1) to give a general idea about the TOC threat in Europe, (2) to provide a comprehensive understanding of international police cooperation efforts, (3) to improve understanding of the extradition mechanisms, and (4) to emphasize the need for fast, effective, and

workable extradition agreements between states that will help combat transnational criminality.

Chapter Four emphasizes the importance of extradition as a tool that can contribute to international police cooperation. Extradition rules, such as double criminality, speciality, ne bis in idem (double jeopardy principle), aut dedere aut judicare (either extradite or judge) are discussed. Also the grounds for refusal, such as political offence, nationality, death penalty, and lapse of time, are described in this section. This chapter further analyzes the main extradition conventions that are related to European countries. For example, The European Convention on Extradition of 1957, the UN Model Treaty of 1990, the 1995 EU Convention on Simplified Extradition Procedure, the 1996 EU Convention relating to Extradition, and finally the European Arrest Warrant (EAW) are all examined. Finally, two of these conventions, the 1957 Convention and the EAW, are compared to expose the significant differences between the traditional and the new extradition processes.

In Chapter Five, an overall assessment is provided that emphasizes the importance of international police cooperation, followed by recommendations that will result in improvements.

CHAPTER 2

TRANSNATIONAL ORGANIZED CRIME AND POLICE COOPERATION EFFORTS IN EUROPE

Introduction

This chapter begins by examining the transnational organized crime (TOC) problem in Europe in the first section. It identifies major organized crime groups and outlines their main activities. Since the general increase in transnational crime and the technological developments as well as high mobility within population require international police cooperation (Gammelgard, 2001), the following sections explain the most significant efforts in this field. Therefore, detailed information on the history, structure, mandates, and activities of Interpol, Trevi (acronym for Terrorism, Radicalism, Extremism, and Violence International), the Schengen Group, and Europol are provided in chronological order.

Transnational Organized Crime in Europe

Transnational crime is not a new phenomenon in Europe. In 1893, Professor Franz von Liszt of the Berlin University explained how criminal groups had been operating freely over several countries, including Germany, Austria, France and the U.K. (Fooner, 1989). Likewise, in order to explain international criminality, Deflem (2002) says that the end of World War I (WWI) created a crime wave. For example,

swindlers, passport, check and currency forgers, thieves, white slave traders and drug traffickers crossed numerous boundaries taking advantage of their mobility after the war.

In the 1970s, some specific terror attacks, such as the killing of athletes at the 1972 Munich Olympics, forced European Union (EU) member states to explore solutions to the international terrorism problem and placed terrorism at the top of their security agenda. Unfortunately their focus shifted as TOC became a principal threat in the EU during the second half of the 1980s causing their emphasis to change from terrorism to organized crime, drugs, and illegal immigration. This happened because of the integration process and the loose border controls that inadvertently facilitated transnational criminal activities (Anderson, 2000; Andreas, 2003; Cali, 2000; Cloud, 2000; Edwards & Gill, 2002). TOC groups were provided great opportunities through single European market, open borders, and single currency (Allum & Sands, 2004). Such opportunities for transnational activities have facilitated the growth of criminal organizations and Europe has become a center for such illicit activities. Not only have those involved in TOC learned to take advantage of the inconsistencies in the legal systems, taxation, and law enforcement between the different countries but they have also become more flexible and more adaptable in their methods posing considerable challenges for intelligence and law enforcement agencies (Williams & Godson, 2002).

In the last 15 years, the TOC has increased significantly because of the disintegration of the former Soviet Union, the collapse of the Berlin Wall, the elimination of border controls, and immigration from other parts of the world (Shelley, 2002). Although, in the past, organized crime used to be identified only with Italian mafia

organizations, today most people in Europe are well aware of the criminal activities of foreign groups such as the Russian, Turkish, and Albanian mafias (Paoli, 2002). The annual global worth of the TOC is estimated to be at more than $500 billion from drugs alone and almost $1.5 trillion from money laundering. For that reason alone, the name “empire of evil” is appropriate for organized crime phenomenon to emphasize the power and capacity of the TOC (Raine & Cilluffo, 1994).

Defining Organized Crime

Transnational organized crime is a broad concept; therefore, it is difficult to find a definition that includes every feature of the TOC. Many scholars and social scientists, who have attempted to develop the most all-inclusive definition, have found that TOC is best defined by its characteristics (Guymon, 2000). As this study only focuses on the TOC phenomenon on the European continent, definitions made by the Council of Europe and the EU, as well as some definitions by criminologist are included.

The Council of Europe uses the following mandatory and optional criteria to define crime or criminal groups as "organized crime":

Mandatory criteria:

1. Collaboration of three or more people
2. For a prolonged or indefinite period of time
3. Suspected or convicted of committing serious criminal offences
4. With the objective of pursuing profit and/or power

Optional criteria:

1. Having a specific task or role for each participant
2. Using some form of internal discipline and control

3. Using violence or other means suitable for intimidation

4. Exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or any other means

5. Using commercial or business-like structures

6. Engaged in money laundering

7. Operating on an international level (Council of Europe, 2002).

The EU defines a criminal organization in the Joint Action adopted by the Council of the EU on December 21, 1998 in the following way (Council of the EU, 1998). According to Article 1, a criminal organization shall mean “A structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.”

Both institutional definitions are similar, as they have the following four criteria in common:

1. The number of persons,

2. The duration of the association,

3. The seriousness of the offence,

4. The financial/material benefit or power.

However, definitions by the criminologists vary somewhat, and the debates concerning organized crime, as whether it is an economic or cultural phenomenon are likely to continue (Allum & Sands, 2004). Sutherland (1949) considers organized crime

a social parasite which arises with the lack of a strong government and characterizes it by a division of labor, definite territories, and the selection of leadership from its own ranks.

Albanese (1989) defines organized crime as a continuing criminal enterprise that rationally works to profit from illicit activities that are in great public demand. Its continuing existence is maintained through the use of force, threats, and/or the corruption of public officials.

For Abadinsky (1990), on the other hand, organized crime is part of a class struggle in which the dynamics of classes, their means (i.e. theft and vandalism) and their ends (i.e. wealth and power) are highly pertinent.

In terms of the reasons of TOC, many academicians interestingly assert that the TOC became the focus of attention as a result of the need for a new enemy after the decline of the external security threat from communist states. Since the security and intelligence services cannot survive without an enemy, the threat of the TOC, which is believed to emanate from immigrant organizations, would be a vehicle for reinventing roles for these security services and a justification for increasing their resources (Chalk, 2000; Den Boer, 2000; Edwards & Gill, 2002; Paoli, 2002).

In order to see the whole picture of this crime problem in Europe, one should scrutinize the situations that have fueled the increase in the TOC in the last two decades.

Reasons for the Rise in TOC

According to Williams and Godson (2002), there are three factors that explain the increase in the TOC: opportunities, pressures and incentives, and resources; and some

political, economic, and social developments trigger these factors. In the following part, six major reasons for the rise of the TOC in Europe are explored.

(1) The end of the Cold War: In 1992, serious crimes investigator, Boris Uvarov said that "The iron curtain … was a shield for the west. Now we have opened the gates, and this is very dangerous for the rest of the world. America is getting Russian criminals; Europe is getting Russian criminals. They will steal everything. They will occupy Europe. Nobody will have the resources to stop them. You people in the West don't know our mafia yet. You will, you will" (Sterling, 1994). He was absolutely right. The end of the Cold War in 1989, or more accurately, the collapse of the Soviet Empire, has had a direct effect on the rise of the TOC in Europe.

The breakdown of the former Soviet Union has destroyed the existing criminal justice systems to a great degree, and it was not easy for the newly emerging nations to develop effective police systems in as prompt manner as was needed (Harris, 2001). Russian crime organizations, no longer under the dominating control of an authoritarian government, seized the opportunity to gain a substantial place in the national economy. The corruption mechanism, that provided the criminals with immunity, resulted in a great expansion of organized crime in Russia and other newly independent states (Williams & Godson, 2002). The political changes razed not only the Berlin Wall but also the most rigid border controls and exposed Western Europe to an organized crime threat from the east. With the elimination of the iron curtain, which had prevented transnational crime by impeding travel from the east to Western Europe, there was no apparatus left to ensure that criminals were kept within existing boundaries. Organized crime was able

to expand the scope of its activities in ways that were unprecedented previously (Gammelgard, 2001; Stanislawski, 2004).

(2) Abolition of internal borders: One of the main objectives of the EU has been the creation of the Single European Market which is based on the idea of creating a common area within Europe. This common area is designed to be free from all physical and fiscal barriers so that the free movement of goods, persons, services, and capital can be realized (Moore, 1996).

The internal borders of France, Germany, the Netherlands, Belgium, Luxemburg, Spain, and Portugal were first abolished in 1995 when the Schengen Convention came into effect. However, the removal of state border controls and identity check points had negative side effects and created opportunities for international criminals (Carter, 1997; Moore, 1996). It encouraged the growth of transnational organized crime and facilitated the movement of criminal activity across State borders (Klosek, 1999). The criminals who managed to land somewhere in the EU remained free unless they were captured on external EU borders or at spot checks. Thus, the new border policy made life easier for everybody, including the transnational criminals.

(3) Globalism and increased economic activity: The world is becoming smaller and more interrelated day by day. The establishment of worldwide financial markets, the reduction in trade barriers, privatization, new information systems, uncontrolled currency flows and the unprecedented freedom to travel internationally are the products of the globalization phenomenon. As a result of globalization, states lost important levels of their abilities to influence and control the events locally; thus, organized crime groups were provided ample opportunities (Gros, 2003). Criminal organizations became more

transnational in character due to the globalization of trade and the growing consumer demand for leisure products (Williams, 1994).

Developments in transportation, telecommunications, and technology brought incredible opportunities and facilitated travel, communication, and trade for almost everyone – including the transnational criminals (Carter, 1997; Edwards & Gill, 2002; Harris, 2001). Criminal organizations took advantage of the tremendous increase in global trade during the 1990s, which left customs authorities increasingly baffled. It became easier for criminals to transfer large quantities of illegal goods such as drugs, arms, and people over the continents and to hide illicit transactions, products and movement. This was due to the fact that law enforcement agencies and customs officers were unable to inspect more than a small proportion of the cargoes and people coming into their territories (Andreas, 2003; Paoli, 2002). The mobile phones, computers, and the Internet have changed the way illegal businesses are operating. Moreover, with the enlargement, the EU now has external borders with countries that are known to be important source and transit countries for both goods and people. This includes countries such as the Ukraine, Belarus, and Russia to the east, and the Balkans in the south.

(4) Immigration: All EU member states are affected by the flow of international migration. In spite of the restrictive immigration policies, which have been in place since the 1970s in most member states, there is still a keen desire to migrate to Western European countries. A large number of migrants have continued to come to the EU looking for work. These immigrants have been joined by asylum-seekers and illegal immigrants. According to statistics published, the net influx of foreign migrants into the

EU increased to about 1,688.00 in 2002, and 71% of these migrants preferred Spain, Italy, Germany and the U.K. During the period between 1992 and 2002, the total number of asylum applications in the EU was almost 5 million (European Commission, 2004). The presence of large expatriate communities in the EU is obviously a useful asset to organized crime groups. Immigrant groups mostly live in cultural ghettos under relatively poor conditions and they provide cover, manpower and knowledge to organized crime groups (Williams & Godson, 2002).

Illegal immigration is another dimension of the problem. A number of factors such as conflicts and poor economic conditions led to massive migration pressures towards the EU (Moore, 1996). The total estimate of illegal entries to the EU in 2001 was more than 500,000 (Jandl, 2004). Illegal immigration attracts organized crime (OC) groups as it is one of the most high-profit low-risk activities. According to Benyon (1994), immigration problem have become the main internal security threat to the EU replacing terrorism and drug trafficking.

(5) Chaos and economic conditions: The chaotic atmosphere in poor Eastern European countries has created fertile conditions for the proliferation of organized crime groups. The governmental authorities and justice systems were ineffective due to corruption, intimidation, and the blatant use of force by the OC groups (Stanislawski, 2004). The need for protection, debt collection, and contract enforcement for business has also provided a whole new set of opportunities for criminals. The chaotic situation in these poor countries has been ideal for the development of criminal behavior. Criminals have figured out how to make a profit trafficking in legal goods that are not readily available.

The same economic problems were observed in the Balkans after the resurgence of ethnic and regional conflicts when the international sanctions were imposed. New illegal markets emerged swiftly creating a new class of powerful and wealthy criminals (Mutschke, 2000; Politi, 2001; Williams & Godson, 2002).

(6) Funding ethnic conflicts: It has often been observed that so-called political movements have converged with organized crime to create financial profits. In the 1990s, when the ethnic and regional conflicts were on the rise, some ethnic groups and terror organizations, which were fighting existing states, became involved in criminal activities, in order to fund their political activities and to afford the armaments. They became involved particularly with the drug business, arms trafficking and illegal immigration (Williams, 1994).

Some terror organizations, such as the Partiya Karkeran Kurdistan (PKK - Kurdistan Worker's Party), are believed to be using their political struggle as cover for their criminal activities (Andreas, 2003). Regardless of their motives, the terror organizations largely participate in organized crime activities because of the high income and low expenses. According to Williams and Godson (2002), although much of its financing comes from voluntary contributions, the Irish Republican Army (IRA) is involved in different criminal activities ranging from video piracy to bank robberies, extortion of small businesses and the theft and sale of construction equipment.

It is a fact that sovereignty remains the core premise of international relations and foreign policy. Some people believe that the national sovereignty concerns among the EU members have contributed to the increase in TOC activities in Europe. The reluctance to create efficient institutions and rigid legal rules Union-wide stemming from

the sovereignty concerns has weakened the combat against the TOC (Carberry, 1999; Cloud, 2000; Stanislawski, 2004).

Major OC Groups in Europe

OC groups establish themselves in states with weak governmental infrastructures and insufficient legal institutions where they can flourish and proliferate freely. Though the structure, membership, and licit or illicit activities of OC groups differ to a great extent, they have some common features: mobility, adaptability, and capability to operate across the national borders (Cali, 2000; Williams, 1994). OC groups operating in Europe originate from all over the world including Africa, Eastern Europe, the former Soviet Union, the Middle East, China, Southeast Asia, the Indian subcontinent, and Latin America (Shelley, 2003). According to the 2003 numbers, there are around 4,000 known OC groups in the EU member states (Europol, 2003). The following part explores some of the most significant OC groups.

(1) Italian OC groups: There are four main groups in the Italian OC framework, which are present and active in many other European countries: La Cosa Nostra from Sicily, the Camorra from Naples, the ‘Ndrangheta from Calabria, and the Sacra Corona Unita from Apulia. Drugs are the major business of the Italian OC groups (Becchi, 1996), and they mostly engage in traditional activities such as extortion, protection, and the smuggling of contraband. The Italian groups are also identified in fraud, counterfeiting, racketeering, illicit gambling, usury, prostitution, money laundering, arms and stolen car trafficking. There are no monopolies in the Italian drug market. They either specialize or operate side by side (Becchi, 1996). They commonly use corruption

to further their interests and have developed considerable links with politicians and public institutions.

In transnational operations, they collaborate with other organized crime groups. They have drug trafficking links with the Colombians and Turkish groups, and drug and human trafficking links with ethnic Albanians. They also cooperate with Russian groups in the trafficking of counterfeit dollars, arms and migrants (Allum & Sands, 2004; Europol, 2003). Despite all this activity, according to Bundeskriminalamt (BKA) 2003 OC Situation Report, the number of Italian OC groups in Germany have continued to decrease in recent years (63 investigations in 2000, 24 investigations in 2003) which may indicate that Italian groups are losing strength in the European market (Bundeskriminalamt, 2004).

(2) Russian OC groups: After the fall of communism in the period of 1989-1991, the weakness of the Russian state aided the emergence and proliferation of Russian OC groups. However, some academicians assert that the seeds of organized crime were already sown in the system before the collapse of communism as a result of the state owning all goods and services (Albini, Rogers, Shabalin, Kutushev, Moiseev & Anderson, 1997).

The estimated number of active Russian OC groups ranges from 2,500 to more than 8,000. While some groups remain local, many others operate internationally. Russian OC groups use intimidation and violence, which has become their distinctive characteristic, in power struggles. According to Carter (1997), 19% of Russia's police officers left the police services in 1992 and many of them have become involved in organized crime. This has apparently also happened with many of the former KGB and

Red Army personnel. These well-trained people comprise an important element of the Russian OC groups. They are mostly used in contract killings to eliminate law enforcement officers and politicians (Allum & Sands, 2004). Russian OC groups direct a significant portion of economic activity in Russia and have penetrated key sectors of the economy, such as the banking, oil and gas sectors (Williams, 2001).

Many Russian OC groups operate all over Europe and engage in drug trafficking, prostitution, money laundering, pornography rackets, theft, smuggling of immigrants, arms, and stolen luxury cars. They are very capable of exploiting legal and administrative loopholes and their successes stem from their large financial resources invested in legitimate businesses (Europol, 2003). According to Allum and Sands (2004), they commit one third of all crime committed in Germany. Moreover, in these transnational operations, they collaborate with Italian groups and also have drug trafficking links with the Colombians.

(3) Turkish OC groups: In 2000, 47 OC groups were identified in Turkey (Council of Europe, 2002). Though the number of Turkish OC groups seems small, Turkey's key geographic location as a bridge combining two continents makes them more significant than other groups involved in heroin trafficking to the European market. Furthermore, the prevalence of Turkish people in Germany, the Netherlands, France, and in other EU countries provides Turkish OC groups not only manpower and cover, but also distribution webs (Williams, 1994). They are very active across Europe with the exception of Finland, Luxembourg, and Ireland. Essentially, they control the heroin smuggling and wholesale distribution throughout Europe, particularly in the U.K., the Netherlands, and Germany (Europol, 2003; Paoli, 2002).

Though heroin trafficking is their main activity, the Turkish OC groups are also involved in illegal immigration, counterfeiting, kidnapping, arms smuggling, protection rackets, and trade in stolen cars. They launder illegal profits by investing in real estate, tourism and leisure industries, and transport companies. They have links with Italian, Albanian, and Dutch OC groups (Allum & Sands, 2004).

On the other hand, the Turkey-based terror organization Partiya Karkaren Kurdistan (PKK - Kurdistan Workers' Party) is involved in narcotics and drug trafficking as well as money-laundering activities in Europe. The PKK's high level of narcotics trafficking throughout the 1990s has been recognized by many agencies, including the U.S. Department of State, the U.S. Drug Enforcement Administration, the United Nations International Drug Control Programme, and the Observatoire Géopolitique des Drogues. One chief prosecutor in Germany indicated that 80% of the narcotics seized in Europe are linked to the PKK or other Turkish OC groups (Curtis & Karacan, 2002).

(4) Ethnic Albanian OC groups: It is believed that lasting unrest in Kosovo led ethnic Albanians to resort to criminal behavior to support their political struggle and that the Kosovo Liberation Army uses proceeds gained by ethnic Albanian OC groups in heroin trafficking in Europe (Williams & Godson, 2002). One local anti-drug expert emphasized that approximately 5 tons of heroin was transferred through the Kosovo province, which indicates 120% increase from the pre-war statistics (Politi, 2001). In addition to drug smuggling, they also engage in trafficking in human beings. The massive immigration of Albanians to Western European countries in the 90's facilitated the proliferation of ethnic Albanian OC groups (Mutschke, 2000). While they were service providers in their early years, more recently, they have managed to take over

certain criminal markets from the Turkish OC groups. However, they still act occasionally as service providers especially for Colombian OC groups involved in cocaine trafficking (Europol, 2003).

(5) Bulgarian and Romanian OC groups: In 2001, 1,401 Romanian and 295 Bulgarian OC groups were identified in their respective countries. Romanian OC groups mostly engage in financial crimes, robberies, illegal immigration and trafficking in human beings for the purpose of prostitution. Bulgarian OC groups are known for their skills in counterfeiting euro currency and forgery of credit cards. They are also particularly involved in international vehicle crime across the EU. These OC groups cooperate with other groups in the fields of drug trafficking and trafficking in women, falsifications of bank notes, credit cards and other similar documents, and pirated products and cigarette trade. These groups are involved in operations in countries including Germany, Hungary, the Czech Republic, Greece, Italy, Turkey, Austria, France, Moldova, and the countries of ex-Yugoslavia. Since both OC groups are extremely dynamic and pervasive in Europe, they are considered one of the main threats to the EU (Council of Europe, 2002; Europol, 2003).

Apart from the above mentioned groups, there are also many OC groups such as the Colombian cartels, the Chinese Triads, and the Nigerians which operate in Europe. It is important that cooperation and mutual support among the different OC groups became a reality in the 1990s. While some criminal mergers were created to develop supplier relationships, other alliances improved contract relationships for certain services like transportation, security, contract killing, and money laundering. Even the traditional organizations, such as the Sicilians, joined the cooperation networks to

further their criminal trade (Stanislawski, 2004; Williams, 2001). The fact that some groups are highly dominant in certain markets or territories also entails such cooperation links among the groups.

OC Activities and Impacts

OC groups not only vary in their model and size but also in their activities. Although some of them solely focus on drug trafficking, others deal with a wide range of criminal activities, including illegal immigration, money laundering, prostitution and arms trafficking.

Among all forms of transnational crime, drug trafficking is the most lucrative for OC groups and constitutes one of most pressing problems for Europe. According to an Interpol estimate based on the production of drugs in metric tons and the distributor price of a particular drug per kilo, the annual revenue from illicit drugs traffic is $500 billion (Edwards & Gill, 2002). The OC groups use some portion of this revenue to corrupt or eliminate the politicians, journalists, and criminal justice staff and even to pay for their own private armies (Fijnaut, 2000; Moore, 1996).

The drug routes tend to export from poorer to richer countries. Heroin originates from the Golden Crescent – Afghanistan, Pakistan, and Iran – and flow to Western Europe often through the Balkans. The Balkan Route starts in Turkey and continues in several branches throughout Eastern and Central European countries and also encompasses ferry routes between Greece and Italy (Andreas, 2003). This classical Balkan route nevertheless has certain variants. Most notable is the route from Iran through southern Russia towards the Baltic coast at Tallin. From there shipments are made to Rotterdam and other European ports.

Besides the Balkan Route, another route into the EU is Africa. The continent is attractive to criminals because of its weak government administration and corruption. It is involved in trafficking from South America and Asia. The Columbian Cartels, for example, use the African route to ship cocaine towards the EU via Spain and Italy where Columbian OC groups have strong connections (Council of Europe, 2002; Shelley, 2003).

Illegal immigration is another lucrative crime in Europe. The extent of it has become more apparent after the abolition of internal borders. The estimates of the International Organization of Migration underline that illegal immigration is a $6 billion a year business. Immigrants frequently arrive in the EU countries from crime-rich areas of the world that have organized crime connections. High costs imposed by OC groups for their services sometimes force illegal aliens to engage in criminal activities, such as drug distribution and prostitution, to pay the immigration traffickers (Shelley, 2000; Truong, 2003; Williams, 1994). Moreover, most of the European states naturally do not provide welfare services or legal employment to the illegal immigrants. This tends to force them into criminal activity as a way to make a living for themselves (Chalk, 2000). Not only are these people seen as contributing to problems of crime and social disorder, but they are also perceived as a threat to national identity. As a result, xenophobia is on the rise in certain countries (Moore, 1996; Shelley, 2003).

All forms of transnational crime are often accompanied by various serious side effects such as money-laundering (Fijnaut, 2000). In order to prevent the governments from seizing their revenues, OC groups take advantage of any legal opportunities and utilize a wide range of instruments to launder their money, including real estate, import

export firms, banks, exchange bureaus and stock markets (Magliveras, 1998; Shelley, 2000).

In addition to the crimes mentioned, OC groups engage in several illicit activities including illegal arms trade, smuggling of contraband, trafficking in stolen art, nuclear materials, automobiles, endangered species, hazardous waste, counterfeiting, credit card and document fraud, tax evasion, smuggling of foodstuffs and stimulants, the import and export of protected plants and animals, industrial espionage, obtaining government subsidies by fraudulent means and more recently computer and IT crime. These transnational activities complement the more traditional forms of illicit activity such as vice crimes, extortion, and racketeering (Fijnaut, 2000; Gammelgard, 2001).

As the EU is based on a sound economic structure and freedoms, high levels of criminal activity affects many aspects of daily life, economic development, security, and the democratization in Europe. The increased personal property and automobile thefts, widespread credit card and document fraud, and huge waves of immigration decrease the sense of security among citizens. People indeed worry about the increase in drug use, particularly among youth, not only because it causes enormous health costs for society but also it supports the organized crime phenomenon (Shelley, 2003). Environmental crime, which usually involves OC groups, causes serious health risks for populations residing in the coastal areas. Still these concerns are only the tip of the iceberg.

The trafficking of arms to rogue states, insurgents and terrorist groups affects European security. The OC groups undermine state capacity to take serious measures against them by intimidating or corrupting different branches of the legal system.

Through employing corruption, OC groups make use of government officials for network protection and counterintelligence and use lawyers and accountants for services such as money laundering.

The corruption, per se, possesses a great threat for the democratization process in Eastern Europe. The organized crime mostly threatens weakened states which lack a strong judicial system, stable political mechanisms and a government that lacks broad legitimacy among the population. Under such conditions, organized crime groups easily infiltrate the legal systems and influence the adoption of laws that prevent democratization (Williams & Godson, 2002). The TOC, furthermore, endangers political and economic stability to conduct its activities. The unstable conditions repel foreign investors because they cannot compete within an economy that is corrupted (Stanislawski, 2004).

In summation, it is evident that TOC groups operating in Europe are extremely mobile and acting without respect for borders (Van der Heijden, 2003). They cooperate with other OC groups to survive or advance their profits. Likewise, the only possibility of effectively combating the TOC is through international cooperation. The TOC problem cannot be resolved at a national level; individual national efforts are incongruous with the nature of this phenomenon. Policies aimed at combating the TOC need to go beyond national boundaries in order to eliminate the refuge that OC groups find in different jurisdictions. The next sections explain how such international cooperation efforts have emerged in Europe in the police field.

International Police Cooperation and the Role of Interpol

Interpol is the biggest and the oldest existing international police organization with 182 members; however, it was not entrenched in an international political structure like the United Nations (UN) (Klosek, 1999). As a police organization without the typical police powers of arrest, investigation, search, or seizure, Interpol has been successfully utilizing its power to control data and data systems and helping members fight international crimes since 1923 (Fooner, 1989; Imhoff & Cutler, 1998). In recent years, Interpol expanded its scope of activities to include criminal intelligence analysis, coordination of international police operations, and police training and professional development (Coleman & Barnett, 2004).

Early History of International Police Cooperation

The development of international policing has its roots in the history and the significant practices seen in Europe in the 19th century (Anderson, Den Boer, Cullen, Gilmore, Raab & Walker, 1995). The early international police cooperation forms were basically designed to protect autocratic political regimes, and ideological differences among the European countries limited these cooperation forms to political purposes (Deflem, 2000, 2002).

The opponents of conservative governments, such as anarchists and social democrats, constituted the targets of these international police initiatives. The Police Union of German States, for example, operated between 1851 and 1866 in order to control political activities and consisted of the police forces from Austria, Baden, Prussia, Sachsen, Hannover, Bavaria, and Württemberg, the nations that were

politically and ideologically close (Deflem, 2000). The political nature in international cooperation was also observed in the Anti-Anarchist Conference of Rome, which was organized by Italian authorities in 1898 in order to structure international policing against anarchist movement. In addition to political crimes, narcotics and prostitution were also perceived as a common threat in Europe. Still, the early efforts taken since the middle of the 19th century helped with the formation of a European police culture (Deflem, 2000).

In April 1914, the First Congress of International Criminal Police was held in Monaco. Prince Albert I of Monaco assembled this congress and although not empowered to act for their governments, the delegates – magistrates, diplomats, lawyers, and police officers – attended from twenty-four countries. The congress focused on information exchange among the national police forces in ordinary criminal matters as well as the issues such as a central registration system, harmonization of extradition procedures, and distribution of search warrants. A follow-up meeting was to be held in Bucharest in 1916 (Deflem, 2002; Higdon, 2001). However, only two months after the Monaco Congress, Archduke Francis Ferdinand of Austria was assassinated in Sarajevo and WWI was waged. The war thwarted any realization of the measures discussed at the Monaco Congress (Anderson et al. 1995; Fooner, 1989).

Though WWI was agreed upon as the main factor for the failure of the First Congress, some people believed that it would have still failed even in the absence of the war. It has been put forward that police institutions should be autonomous enough from their national states in order to be able to form an international police organization. This was not the case in the Monaco Congress. The Congress was not organized by police bureaucrats and the attending police officials were in the minority. Instead of

policing topics, the international legal issues, such as extradition procedures were argued by legal experts and diplomats (Deflem, 2000, 2002).

The International Criminal Police Commission – ICPC

Johannes Schober, the Police President of Vienna, organized a congress in September 1923 and it was called “Second International Criminal Police Congress” to underline that they were carrying on from the point where the Monaco Congress had left off. The International Criminal Police Commission (ICPC) was formed at this second congress to provide mutual assistance among national police institutions on matters of ordinary crime. During the congress, the attendants discussed international crime, extradition, the development of an international police language, and technical issues of criminal investigation (Gerspacher, 2002). The ICPC’s headquarters were located in Vienna. The resolutions passed encouraged the exchange of requests, which were based on an extradition order, for the arrest of fugitive criminals (Deflem, 2000, 2002; Fooner, 1989).

The Congress was not a diplomatic initiative and gathered only police officials. These police officials, according to Coleman and Barnett (2004), believed that they could operate more easily and efficiently in the structure of a flexible and informal organization rather than a traditional interstate organization. It was also obvious that political incentives were not involved in the formation process as no international treaty or legal document was signed to establish the ICPC. Also governments did nothing to control its activities. The ICPC was never intended to be a supranational force but an international web for national police systems; therefore, a surrender of national sovereignty was out of the question (Deflem, 2000).

Information on various police matters and notices of wanted criminals sent by participating police institutions were collected by the headquarters and this centralization made headquarters strategically important. Though the headquarters had no power to initiate an investigation, it basically passed the requests from one national police institution to another. The ICPC used a monthly periodical, *International Public Safety*, to distribute information on wanted suspects and statistics on international crime. Besides other activities, it organized several international police meetings and two congresses between 1923 and World War II (WWII) (Deflem, 2000, 2002).

The ICPC was considered a "policeman's club" and the delegates adopted an inclusive membership, which required no legal procedure, so that the police work would not stop at borders. Regardless of their ideologies, all states but the Soviet Union were invited to join. To be a member, a state only had to indicate its intention to join and pay the dues. Dues were set at one Swiss franc per 10,000 inhabitants of the member country. The membership grew from 22 representatives at the time of the ICPC's founding to 34 members by 1934 (Coleman & Barnett, 2004; Fooner, 1989).

Soon after the German troops invaded Austria on March 12, 1938, the then President of the ICPC, Michael Skubl, was arrested and detained until 1945 (Anderson et al., 1995). The Headquarters moved to Berlin and there was contradictory information about the fate of the ICPC files during WWII, but they were thought to have been destroyed or lost in some way. During the Nazi period, many nations terminated membership. In Interpol history, WWII is considered an era during which the organization was non-operational (Deflem, 2002).

In June 1946, a Belgian police official, Florent Louwage, pioneered a meeting in Brussels to reconstitute the ICPC. More than fifty delegates from seventeen countries attended the meeting and decided to relocate the Headquarters to Paris (Coleman & Barnett, 2004; Fooner, 1989). Despite the good intentions of those involved, the reconstitution of ICPC was very difficult because of keen divergence between some states and the fact that the organization had been relatively forgotten and was in need of money.

Germany, Austria, and Italy did not participate in the initiative as they were under the control of the Allied powers and without independent police forces. The Soviet Union and Spain were left out of this initiative as well. Still there was unrest in the Commission, which became apparent after the Czech refuge crisis.

The FBI, representative of the U.S. at the ICPC, was not happy with the practical benefit of ICPC membership and had concerns about the members from communist countries. While the FBI was planning to terminate ties with the ICPC gradually, ten persons hijacked an airplane and fled from Czechoslovakia to the U.S. military air base at Erding, Germany in March 1950. These persons got political asylum from the U.S. authorities in Germany. Meanwhile, at the request of Czechoslovakia, the ICPC circulated wanted notices for the hijackers. Disregarding the notices, the U.S. refused to extradite the fugitives and at the end of that year, the FBI terminated membership in the ICPC. In 1951, Bulgaria, and the next year, the other communist countries – Czechoslovakia, Poland, Hungary and Romania – resigned (Deflem, 2002; Fooner, 1989).

In this difficult period, the ICPC tried to raise funds and to improve the organization's international profile in order to obtain state and international recognition (Coleman & Barnett, 2004). The ICPC staff focused on modernizing the organization and eventually new structures and symbols were adopted, but the professional standing and nonpolitical functions were kept unchanged to protect its autonomy. The most important steps towards the modernization were taken in 1956 at a General Assembly session in Vienna with the adoption of a new constitution and a new name: the International Criminal Police Organization (ICPO) - Interpol.

The International Criminal Police Organization - Interpol

Interpol has a broad mandate which is believed to result from the desire to protect its sources of authority and autonomy, and even the original constitution adopted in 1923 did not mention any specific tasks. Article 2 of the Constitution states that Interpol aims to advance the mutual assistance between criminal police bodies in accordance with the respective laws of member countries and to build institutions that are likely to contribute to fight and repress the ordinary law crimes.

According to Annual Reports of Interpol or their media releases, the organization is fighting international crime; still, the phrase "international crime" is never mentioned in the Constitution. In his book, Fooner (1989) explains Interpol's approach. Although there is dispute over the existence of international criminal law, the existence of international criminality is free of doubt. Interpol underlines that international crime occurs when criminal activity concerns more than one country. Not only is the nature of the crime important but also the identity or behavior of the criminal. For example, the

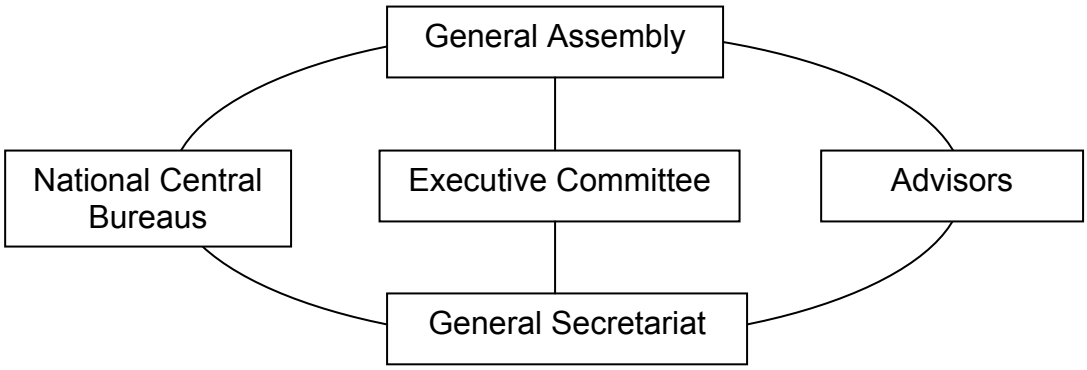
crime can be committed in more than one country or the offender can run away to another country.

Similarly, although the ICPC was basically intended to focus on centralization of its activities and information about ordinary criminals, this characteristic of the organization was not included in the Constitution with the fear that the states might perceive “centralization” as a violation of sovereignty (Coleman & Barnett, 2004).

The Organizational Structure of Interpol

Interpol is comprised of five parts which are stipulated in Article 5 of the Constitution: the General Assembly, the Executive Committee, the General Secretariat, the National Central Bureaus, and the Advisers.

Figure 1. Structure of Interpol. (Adapted from www.interpol.org)



(1) General Assembly: The General Assembly, the supreme body of the Organization, is composed of representatives appointed by each member country and meets once a year. In pursuant with Article 8 of the Constitution, the General Assembly basically makes all important decisions. Among other functions, it grants the new members, approves amendments to the Constitution and activity program for the coming year, elects officers such as the President of the Organization and appoints the

Secretary General, adopts resolutions and makes recommendations to members, and determines the financial policy of the Organization.

There are two types of actions taken by the General Assembly: the resolutions and the decisions. The resolutions, in the forms of rules or recommendations, are not binding and only push for policy matters and actions on matters of police business. This is because the General Assembly has no power over the activities of member countries (Fooner, 1989). The decisions are used for the accession of new members, the election of officials, the adoption of the activity program for the following year, or for the selection of the next session place.

(2) Executive Committee: The General Assembly selects the Executive Committee which is composed of 13 members: the president of the Organization, 3 vice-presidents, and 9 delegates. The president is elected for four years and vice-presidents and delegates for three. Due to the ongoing criticism for being too European, it was decided in 1964 that the diversity of geographical representation in the Executive Committee would be ensured. For that reason, all members are now from different countries and the president and vice-presidents are from different continents (Article 15) (Fooner, 1989).

In practice, the Executive Committee meets three times a year and basically prepares the agenda for the General Assembly meetings, controls the implementation of decisions of the General Assembly, and supervises the administration and work of the Secretary General (Article 22 of the Constitution).

(3) General Secretariat: The General Secretariat, the core of the Organization, basically centralizes and processes police information. Headed by the Secretary

General, the General Secretariat consists of many sections, units, and branches and the tasks mentioned below are handled by a technical and administrative staff.

According to Article 26 of the Constitution, the General Secretariat must:

1. Put into application the decisions of the General Assembly and the Executive Committee,
2. Serve as an international center in the fight against ordinary crime,
3. Serve as a technical and information center,
4. Ensure the efficient administration of the Organization,
5. Maintain contact with national and international authorities; whereas, questions relative to the search for criminals shall be dealt with through the National Central Bureaus,
6. Produce any publications which may be considered useful,
7. Organize and perform secretariat work at the sessions of the General Assembly, the Executive Committee and any other body of the Organization,
8. Draw up a draft program of work for the coming year for the consideration and approval of the General Assembly and the Executive Committee,
9. Maintain as far as is possible direct and constant contact with the President of the Organization.

The General Assembly appoints the Secretary General for a period of 5 years (Article 28). The Secretary General directs the staff and the permanent departments, administers the budget, and ensures that the daily work of international police co-operation is done properly and that the decisions of the General Assembly and Executive Committee are realized.

(4) National Central Bureaus (NCBs): Each member country has a National Central Bureau – NCB located in their respective countries. The adoption of the NCB model was first recommended by the ICPC in 1927. It is the point of contact for the Headquarters, local law enforcement agencies, and other NCBs and each NCB has to maintain this three-way contacts. It is staffed by the member country and bound to operate in accordance with the national laws. The governments of each member country have to assign a particular police agency, such as Royal Canadian Mounted Police (RCMP) or English Scotland Yard, to be the NCB (Article 32). States hold full authority to make decisions on their NCB's staffing, budget, and the participation level in the Interpol communication system (Coleman & Barnett, 2004). Therefore, each NCB may vary to a great extent from the others in size and in their amount of activity. Although some NCBs conduct all inquiries to respond to international requests, this is not the case for many NCBs. In general, the NCBs are the channels to transmit the requests and they operate as a bridge between the other NCBs and the operational units of their own countries (Higdon, 2001).

Different languages and cultures, confusing national laws and criminal justice systems, and variant police powers are indeed strong barriers against international cooperation. Therefore, the NCB mechanism has a vital importance in Interpol structure. All obstacles that arise from the principles of sovereignty and the procedures of diplomatic channels are also avoided with such network (Fooner, 1989).

NCBs are also used for educational purposes to raise awareness of the respective national communities about the international police cooperation and the

services available in the Interpol framework to struggle with transnational crimes (Gerspacher, 2002).

(5) Advisors: Advisors are selected from among people who have worldwide reputation in a field related to Interpol's interest and they can operate only in an advisory capacity. Advisors are appointed by the Executive Committee for three years and may be consulted by the General Assembly, the Executive Committee, the President or the Secretary General (Fooner, 1989).

In this structure, the General Assembly and the Executive Committee have a supervisory power over Interpol; however, supervision is not only assigned on these bodies.

Supervision

In 1978, French Parliament passed a privacy protection law that was considered by Interpol's executives a critical obstruction to their ability to function. The French argued that individuals should have access to any Interpol data concerning them. In the end, a new Headquarters Agreement of 1982 between France and Interpol made an official consensus and an Exchange of Letters was appended thereto. France decided not to apply the Law of 1978 to Interpol's files and in accordance with the Exchange of Letters, Interpol adopted "the Rules on International Police Co-operation and on the Control of Interpol's Archives" in 1982 (Fooner, 1989).

These rules were designed to prevent the misuse of police information and constituted a basis for the establishment of an independent body, Supervisory Board for the Control of Interpol's Archives, which developed internal controls for its archives. The English name, Supervisory Board, was altered to "the Commission for the Control of

Interpol's Files" in 2003. The Commission monitors the implementation of Interpol's data protection rules regarding any personal data.

On the other hand, some members were insistent that Interpol should have experts from outside the organization to audit their accounts and finances as other international organizations were doing. At the General Assembly in 1986, Interpol assigned the French "Cour des Comptes" to conduct the first external audit. The external auditors have exclusive responsibility for conducting the audit and they ensure that the financial management of Secretary General follows the existing rules

Interpol and Legal Issues

The legality of Interpol has been debated many times. This due in part to the fact that it was founded upon a Constitution that was prepared by police officers and has no basis in international treaty or in any accepted international convention. Indeed, the founders neither submitted a draft of the Constitution to governments for approval nor were any diplomatic signatures placed on the draft. However, there are some indicators that have to be taken into consideration (Fooner, 1989).

First of all, the governments of the member states appointed delegates, have paid the dues, and obeyed the rules of Interpol since 1923, all of which indicates broad support for its legitimacy.

Also, the League of Nations designed the ICPC as the agency for the fulfillment of the 1929 Convention on Currency Counterfeiting and the other international conventions, such as the European Convention on Extradition of 1957 and the European Convention on Mutual Assistance in Criminal Matters of 1959, have provisions which direct the contracting parties to use Interpol channel (Higdon, 2001).

The UN did grant Interpol non-governmental organization (NGO) consultative status in 1948, which enabled it to participate in the UN commissions and sections on drugs, crime prevention, and human rights. Also, later in 1971, the UN accepted Interpol's inter-governmental organization status thus conferring even more legitimacy on the organization (Fooner, 1989).

Interpol's official transmission role has been mentioned in several recent multilateral conventions such as the Schengen Convention, the Convention on the setting up of a European Police Office (Europol), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the United Nations Convention against Transnational Organized Crime. In addition to the debate over Interpol's legality as a whole, the location of its headquarters has become a subject of debate as well.

The question of the headquarters' legal identity had been ignored until Interpol requested the French Ministry of Finance to grant exemption from certain taxes. They received the shocking response that Interpol had no legal status in France. It was shocking because Interpol had already opened bank accounts, hired staff, and paid for government health insurance in a way similar to that of other legitimate organizations in France. In May 1972, Interpol signed the Headquarters Agreement with France. This agreement procured a legal identity as well as some rights and immunities (Fooner, 1989). Later in January 1978, France passed a new law on information technology, files and freedoms and tried to apply that law to Interpol's files. Following the exchange of views, the problem was solved and a new headquarters agreement was signed on November 3, 1982 (Anderson et al., 1995).

It would be correct to say that Interpol received more severe criticism than these legality issues for its attitude towards the political crimes and terrorism.

Political Crimes and Terrorism

The officials who founded the ICPC were aware that during the early 1920s the European governments would not support any international policing initiative covering political crimes. They further understood that if they restricted the scope of their activities to ordinary crime that this would help the ICPC avoid state scrutiny and loss of autonomy. For that reason, the scope of the Interpol was purposefully limited to ordinary crime and police cooperation was formed regardless of the formal politics or state interests. Yet, assistance in struggling with political crimes had not been precluded in the original statutes (Coleman & Barnett, 2004).

After WWII, believing that the non-political stance had resulted in achieving respect in all member countries, the ICPC accepted a 'neutral position' by refusing to become involved in cases of a political, religious or racial nature. In 1948, the phrase for this restriction was added to the end of the first article of the Statutes.

When the Constitution of the Interpol was being drafted in 1956, this rule, which applies both to the General Secretariat and to member states, alone became Article 3: "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character." It is believed that Nazification of the ICPC during WWII has strongly motivated Interpol to use rigorous and absolute terms in its constitution to exclude politics out of international policing (Coleman & Barnett, 2004).

The Interpol General Assembly has interpreted Article 3 with three resolutions in 1951, 1984, and 1994. This has occurred as a result of the increase in terrorist offences

and developments in international law particularly in reference to the extradition of politically motivated persons in certain conditions.

In practice, the Organization checks the requests from NCBs and may refuse to process a request on the basis of Article 3, but still, states alone have the sovereign right to conclude whether an offence is political. For instance, even if the General Secretariat distributes a red notice following their conformity control, another state may consider the incident political and may refuse the extradition of wanted person. Similarly, when Interpol finds a request contrary to Article 3, the requesting state may send its request through other channels. Interpol basically makes distinctions between the cases only to determine if a request violates Article 3. The requests made for treason, desertion or practicing a religion, for example, are automatically covered by Article 3 owing to their natures.

Interpol also examines every request to evaluate if the political or the ordinary-law factor is predominant and bases its analysis on the following three criteria:

1. Place the action was carried out “conflict area”: When the offences are committed in countries which are not directly involved or hostages are taken outside the conflict area,
2. Status of the victims: When there is an attack on members of the general public outside the conflict area,
3. Seriousness of the offence: When some offences, such as aircraft hijackings, the taking of hostages, kidnappings, are committed outside the conflict area; these crimes do not come within the scope of Article 3.

In other words, whether the victims have any connection with the objectives of the offenders and with the countries in the conflict area or with the political situation has vital importance to evaluate the request from the member states.

On the other hand, Article 3 does not mean that any acts committed by politicians or military staff are covered in this provision. For instance, an ordinary offence committed by a politician acting as a private individual is out of this article's scope.

The General Secretariat has received some serious criticism concerning its officials' considerable discretion in determining whether a crime is political or not. It is understandable that an organization strives to protect its expert authority, but in some specific criminal incidents it is quite hard for Interpol officials to anticipate the interests of states even if they stick to the impartiality rule (Coleman & Barnett, 2004).

As previously mentioned, during the Czech refuge crisis in 1950, a group of people hijacked an airplane to reach the U.S. military air base at Erding, Interpol decided it was a case of air piracy and issued wanted notices for the hijackers. However, for the U.S. FBI it was a case of refugees from a communist regime using a legitimate means of escape. After the crisis, the U.S. suspended its membership between 1951 and 1958. Subsequently, Interpol warned its members through a resolution not to send any other requests to the General Secretariat regarding offences of a predominantly political, racial or religious character, even if the facts are a clear violation of the ordinary laws in the requesting country.

Besides the difficulties faced in political crime issues, terrorism was also another hot topic in the agenda of Interpol. Interpol was well aware of the difficulty in making distinctions between ordinary crime and those that were politically motivated. Accepting

terrorism as political, Interpol kept it outside its jurisdiction using the excuse of maintaining an apolitical stand. The international terrorism threat was on the agenda on many states by the end of 1960s. The terrorist bombings, arsons, and hijackings were on the rise affecting daily life worldwide. The states pressed Interpol to start undertaking terrorism cases but Interpol was unwilling due to undesired events such as the 1950 Czech refuge crisis which had changed decision-making rules and standard operating procedures of the organization.

Though Interpol cooperated with other organizations such as the International Civil Aviation Organization and the UN in the 1960s and 1970s to deal with terrorism problem, these attempts were considered inadequate (Fooner, 1989).

The consistent refusal from Interpol side to expand its mandate encouraged states to establish other organizations for this purpose. In order to coordinate antiterrorist information clearing and policy, the European Community established a police network, Trevi (Terrorism, Radicalism, Extremism, and Violence International), in 1975 and they excluded Interpol from this process. Trevi was perceived as a challenge to Interpol's control over international police cooperation functions (Coleman & Barnett, 2004).

Interpol leadership initiated a gradual change in the structure and mandate of its organization. The then Secretary General, Raymond Kendall encouraged states to use Interpol channels to clear information about terrorism cases. For example, Interpol was involved in Pope John Paul II's assassination attempt. They circulated and sought out information related to the firearms used (Coleman & Barnett, 2004).

It was at the 1984 Luxembourg General Assembly when Interpol formally reinterpreted the meaning of political. The continuing pressures and the existence of rival organizations definitely played an important role in prompting Interpol to make such radical changes in the organization and adopt new interpretations of the term political crimes (Anderson, 2000).

Today, Interpol does not refuse the requests to help investigate persons accused of serious and violent terrorist offences on the basis of Article 3. The red notices may be issued for suspects of terror crimes such as serious attacks against human life or physical safety, hostage-taking and kidnapping, serious attacks against property (bomb attacks etc.), and unlawful acts against civil aviation (hijacking of aircraft).

The involvement in the perpetration of a terrorist offence used to be very important as Interpol declined to publish red notices until November of 2003 for suspects who were only charged with membership in a terrorist organization. Nonetheless, at the 73rd session held in 2004, Article 3 was reinterpreted and the General Assembly adopted the mandate that the General Secretariat could take interim measures to allow red notices to be issued for persons suspected of active membership in a terrorist organization (Interpol, 2004d).

Interpol's Communication System

Interpol aims to enable NCBs to exchange information securely and rapidly. In order to provide effective international police communication to fight transnational crime, Interpol replaced the X-400 communication system in 2002 with a new web-based communication system, called I-24/7 (Interpol, 24 hours a day, seven days a week) which enables law enforcement officials across the globe to perform instant and secure

research on a wide range of law enforcement areas to assist them in their investigations. I-24/7 provides the following databases:

1. Automated Search Facility (ASF) Nominal: This facility enables searches on individuals who are wanted at the international level or who are missing. NCBs get access to databases such as the criminal backgrounds, the notice information, extradition arrangements, photographs, and fingerprints.
2. ASF Stolen Travel Document: Organized groups, the most wanted criminals and people professionally involved in drug trafficking, terrorism, illegal immigration, and economic crimes usually use stolen travel documents for their activities to prevent identification and arrest. This search facility is, therefore, very useful to border control units. By using the serial number of the documents, NCBs can find out whether the document is stolen and accordingly get in touch with the relevant authority for further information.
3. ASF Stolen Vehicles: This database comprises more than 4 million vehicles which are reported as stolen by member countries. This allows for the stolen vehicle to be found in one country and returned to the owner by competent authorities.
4. Electronic Notices: This system enabled the NCBs to submit their notice requests electronically and in urgent cases, an international notice can be prepared and distributed to all members within a 72 hours deadline period.

The I-24/7 system has been expanded to include the international DNA matching service and the fingerprint identification system (Interpol Media Release – October 5, 2004). Other services such as the counterfeited and fraudulent travel documents,

databases and disaster victim identification services will also be offered to members through I-24/7 (Interpol, 2004b).

Though it is a relatively new system, the stories from all over the world verify the success of the I-24/7 system. In Brazil, for instance, 45 international criminals were arrested in a few months with the assistance provided via I-24/7 (Interpol, 2004c). Many countries have chosen to extend their I-24/7 connection to police officers in the field and to law enforcement entities at international transit points (Interpol, 2004a). Such a fast and secure communications system also furthers the efficiency of Interpol notice system.

Notice System

The system of international notices has been used by Interpol since its inception in order to help members communicate critical crime-related information to one another. Between 1923 and 1946, the Commission posted wanted notices in its journal, *International Public Safety*. The present system was adopted in 1946. The notices are published for persons who are wanted for committing serious crimes, missing persons, unidentified bodies, possible threats and criminals' modus operandi (Hoey & Topping, 1998). The International Tribunals for the Former Yugoslavia and Rwanda can also use this system to search for persons wanted for serious violations of international law on human rights.

Upon receiving requests from NCBs, the General Secretariat checks each to ensure that Article 3 of Interpol's Constitution will not be violated. After that is confirmed, it then produces notices in four official languages (English, French, Spanish and Arabic). The General Secretariat may only issue green notices on its own initiative.

NCBs had been sending their notice requests by mail but this method was abandoned in 2002 with the inception of I-24/7 communication system. In notice production process, the General Secretariat gives priority to some particular requests; notices for terrorists, for instance, are prepared within a 72-hour deadline. In addition, Interpol also publishes red notices on its public website providing that the concerned country wishes that to happen.

1. Red Notice: Arrest of a person is requested with a view to extradition.
2. Blue Notice: Additional information about a person's identity or illegal activities regarding criminal matters is requested.
3. Green Notice: Warnings and criminal intelligence are provided about criminals who are likely to commit similar crimes in other countries.
4. Yellow Notice: Help is requested to locate missing persons or to identify persons.
5. Black Notice: True identity of unidentified bodies is sought.
6. Orange Notice: Police, public bodies and other international organizations are warned about the hidden weapons, parcel bombs and other dangerous items or material.

The NCBs may also use a “diffusion message” to request assistance in locating a criminal or asking for help in his/her provisional arrest with a view to extradition. This is done prior to a red notice or in urgent cases. Diffusion messages simply contain all the information that a red notices does (Imhoff & Cutler, 1998). The NCBs usually prefer diffusion messages while they are trying to gather all materials needed for a red notice such as a photograph or fingerprint or when they are sending their requests to a particular country or zone.

Through ASF, NBCs have access to Interpol records on persons and within only a matter of seconds they can find out whether a person is known to Interpol records and whether any kind of international notice or diffusion message exists under his/her name (Imhoff & Cutler, 1998). Taking into consideration thousands of messages and requests each NCB receives every year, the ASF indeed helps the NCBs increase their service quality and facilitates cooperation.

The member states seem to be satisfied with the notice system because the number of notices published each year has doubled over the past seven years. The General Secretariat issued 2,122 notices in 2003: 1,207 red, 167 yellow, 133 black, 266 green and 159 blue. As of the end of 2003, there were 11,779 valid notices around the world (www.interpol.int).

Interpol and the Fight against TOC

One of the most important missions of Interpol's is to help member countries in combating all kinds of transnational crimes. Interpol does so by means of its services such as notice systems, ASF facilities, and communications systems and through its projects, analysis, seminars, and symposia. Interpol also reviews and reshapes its operations as well as its structure to keep up with fluctuating crime trends and to provide member countries better services.

Strategic Development Plan (SDP): In the late 1990s, transnational organized crime was acknowledged by crime experts as a threat to national security and the role of international organizations was being debated. Interpol received severe criticism from academics due to its global membership and vague status and even some allegations

that alternative institutions should be established to create sound international cooperative responses to TOC.

In response to this, Interpol developed the SDP which was adopted by the 67th General Assembly in Cairo in October 1998. It was designed to evaluate and redefine the roles and responsibilities of Interpol's components and eventually change its "information clearinghouse" reputation into that of a "global coordinator." With this SDP, Interpol has acknowledged the importance of regional organizations, such as Europol and Aseanapol, and has offered services to improve their effectiveness to fight TOC. As a consequence, Interpol has transformed its competitors into clients (Coleman & Barnett, 2004).

In accordance with the SDP, the police-related activities of Interpol have been reviewed and regrouped into three new directorates: Specialized Crimes, Operational Support Services, and Regional and National Police Services. Under Specialized Crimes Directorate, five sub-directorates have been formed: Drugs Criminal and Organizations, Financial and High Tech Crime, Fugitive Investigative Support, Public Safety and Terrorism and Trafficking in Human Beings. These restructuring efforts were realized to make Interpol more effective in fighting transnational crime (Interpol, 2002).

I-24/7 Communications System: Rapid and efficient communication as well as the healthy databases are crucial to fight TOC. The law enforcement agencies must be able to make necessary connections swiftly between various offences, the criminals who commit them and the crime groups involved. It may take numerous pieces of information to comprehend the entire picture that will allow the resolution of a TOC case. Interpol's I-24/7 communications system, therefore, is an important facility that

allows member states to connect the dots and improve their effectiveness in addressing the crimes of terrorism, drug trafficking, child pornography, human trafficking and other forms of international organized crime.

In his speech at the 72nd General Assembly in 2003, the Secretary General Noble used the Milorad Ulemek case to emphasize the importance of communications systems and quick access to dependable databases.

100 blank passports were stolen from the Croatian Consulate in Mostar - Bosnia and Herzegovina in 1999. At that time, many countries were negligent in entering stolen passport data into national or international databases. Also, at that time, Interpol had not yet created its Stolen Travel Documents project.

The Prime Minister of Serbia, Zoran Djindjic, was assassinated in 2003 and Ulemek was believed to have participated in this incident. When the Serbian police arrested the suspect in Belgrade in May 2004, it was revealed that he had used one of the stolen Croatian passports and that this passport had 26 entries and export stamps from seven Interpol member countries. Using similar examples, Interpol is encouraging all members first to provide the right data and then to use its services and databases through I-24/7 system so that such incidents can in the future be prevented beforehand.

Notice System and Fugitive Investigation Support Sub-Directorate: The notice system is one of the fundamental functions of Interpol which enables member countries to request other members to pursue and arrest fugitives. The major extradition conventions accept Interpol as one of the channels to submit provisional arrest requests. This authority constitutes a base for all extradition requests in the form of a red notice or a diffusion message. In practice, all extradition procedures prior to the

provisional arrest decision by the courts and after the approval for extradition are handled via the Interpol channel.

As a result, the Interpol notice system helps police agencies fight all kinds of crimes and criminals of an international nature except those excluded by Article 3 of the Constitution. In addition to the provisional arrest requests, NCBs may also submit requests for additional information about a person's identity or illegal activities regarding criminal matters. They may also use Interpol to warn other NCBs about criminals who are likely to commit similar crimes in other countries through the use of blue and green notices.

Interpol has also established the Fugitive Investigation Support Sub-Directorate (FIS). It offers a proactive approach to dealing with fugitives. Not only does FIS provide assistance in coordinating searches and multinational fugitive investigations but it also encourages sustained interest in the search for and arrest of fugitives. FIS can do this by providing real-time coordination when a fugitive is on the way from one country to another and easily direct a police agency requesting assistance to the right person or service in another member country (Interpol, 2002, 2003).

Projects: In 1999, Interpol initiated “Project Bridge” to facilitate a more effective and efficient program for the collection of information concerning organized crime groups involved in alien smuggling. This was done in an attempt to combat this form of crime and to undertake adequate measures on the prevention and investigation levels. This project links investigations in different countries concerning international people smuggling networks, especially those handling Asian nationals, thus helping to identify and eradicate them (Interpol, 2003).

The G8 Law Enforcement Projects Sub-Group on Eastern European Organized Crime created a project to collect information on particular organized crime targets and organizations. The sub-group pointed out that Interpol was the only organization with a centralized international database and with a potential to analyze the collected information, Interpol responded by developing a pilot project named “Project Millennium.” Through this project, Interpol collated and prepared analytical reports on East European and Russian organized crime (Mutschke, 2000).

Interpol also runs or contributes to projects where organized crime groups are mostly involved with drugs (Project Exit), illicit trafficking of vehicles (Project Store-Stocar), women trafficking for sexual exploitation (Project Red Routes), corruption, money laundering, and child pornography (Project Artus).

Publications: Interpol publishes *International Criminal Police Review*, *International Criminal Statistics*, *Counterfeits & Forgeries, Passport handbook guide*, *Stolen Works of Art, and Vehicle Registration Documents* which help to raise awareness about international crime and which contain information that can be used by law enforcement to develop anti-crime tactics (Gerspacher, 2002).

Critics

Interpol faces many criticisms, most of which stem from its unique legal basis. Though Interpol has been recognized by the UN, the Council of Europe, and by states such as France, and though Interpol formed independent control mechanisms as a part of a new Headquarters Agreement, some people still criticize its non-political structure (Cali, 2000).

Also, Interpol has been criticized for its overemphasis on Europe, bureaucratic inertia, low level of security in matters such as terrorism, and insufficient presentation of its system and services to relevant officials (Den Boer & Walker, 1993; Imhoff & Cutler, 1998; Klosek, 1999).

Police Cooperation within the EU

The state systems and sovereignty issue were composing barriers in the international crime control area in Europe. However, events such as the killing of athletes at the 1972 Munich Olympics created strong pressure on governments. Thus politicians began to acknowledge that states would have to give up some sovereignty to combat the security problems (Anderson, 2000; Hoey & Topping, 1998). Some groups were formed in the 1970s to coordinate police cooperation against terrorism and to deal with drug-related issues. However, these groups achieved limited results as their members held various different positions and there was rarely any coordination or communication about their actions (Moore, 1996).

This next section focuses only on the main police cooperation systems developed within the EU: Trevi, the Schengen system, and Europol. These are explored as they had and still have the capacity for significant impact on transnational organized crime.

Trevi

During the 1970s, the period when acts of terrorism reached their peak, Interpol consistently refused to expand its mandate to include terrorism cases. Such attitudes from the Interpol side revealed the need for regional organizations within the EU. According to Anderson (2000), the failure of Germany to effectively jail the perpetrators of the 1972 mass murder of Israeli athletes at the Munich Olympic Games resulted in the creation of the Trevi Group.

At a meeting held in Rome in December 1975, European Ministers of the Interior established one of the earliest foundations of international police cooperation in the EU, the Trevi Group. It was designed to battle international terrorism, radical extremism, and violence, and to put the policies established by EU member states into practice (Anderson et al., 1995). It was made up of the then nine Ministers of Home Affairs representing Germany, Italy, France, the Benelux countries (Belgium, the Netherlands, and Luxemburg), the U.K., Ireland, and Denmark. The term Trevi is mostly believed to be an acronym for “Terrorism, Radicalism, Extremism, and Violence International” but some people assert that the Group was originally named after a fountain in Rome (Das & Kratcoski, 1999; Moore, 1996; Tupman & Tupman, 1999). Trevi was designed as an intergovernmental platform for the EU Ministers of Justice and Home Affairs and while the Trevi membership was restricted to the EU member states only, Canada, Morocco, Norway, Switzerland, and the U.S., the states called as “friends of Trevi,” were allowed to participate to meetings as observers (Den Boer & Walker, 1993).

Mandate and Structure

Trevi's original purpose was to combat terrorism. Over time, its mandate as well as its structure changed gradually. In addition to international terrorism, the group developed working groups and started to handle drug trafficking and other types of serious organized crimes, and not only senior officials but also civil servants and police officers were included in the organization (Den Boer & Walker, 1993; Elvins, 2003b; Klosek, 1999). In the last years of its lifespan, Trevi was assigned to make necessary studies concerning the Euro and Europol (Cali, 2000).

Trevi had no permanent secretariat since its inception and operated at three different levels. The ministers, the highest level, were responsible for policing and internal security matters in their own states. The middle level consisted of the senior civil servants and senior police officers who provided police advice. The working groups which included civil servants, police officers, and representatives from related organizations made up the lowest level (Cali, 2000; Klosek, 1999).

1st Group: The Terrorism Working Group was established in 1977 to facilitate coordinated action against terrorism. This group analyzed information held on terrorist groups and provided information regarding practical security procedures and crime scene procedures following terrorist incidents (Moore, 1996).

2nd Group: The Technical Forum was also formed in 1977. It aimed to promote police cooperation and information exchange on a number of issues such as police training, public order, police equipment, forensic science, and football hooliganism (Anderson et al., 1995).

3rd Group: The Serious Organized International Crime Group was established in 1985 to coordinate activities against serious crime. The participation of Trevi-friend countries in this Group proved the importance of its work. (Elvins, 2003a). The Group operated in four different fields:

1. The Drug Trafficking Division focused on drug liaison offices located in drug producer and transit countries. This division also encouraged participating countries to set up a National Drugs Intelligence Unit, and offered the creation of a European Drugs Intelligence Unit.
2. The Serious International Organized Crime Group harmonized police activities and improved international initiatives against money laundering. To realize its goals, it worked together with other international organizations including the UN, the Council of Europe, and the Financial Action Task Force.
3. The Environmental Crime Group dealt with environmental crime to comprehend and decrease such incidents.
4. The European Crime Analysis Group developed techniques to solve particular crimes by analyzing crime in member states.

4th Group: The Trevi 1992 existed for four years between 1988 and 1992 concentrating on the police and national security issues emerged as a result of reduced national border controls (Anderson et al., 1995; Klosek, 1999).

In 1990, the “Trevi Action Program” was produced by Trevi Ministerial Meeting in Dublin which announced some initiatives to complement institutional developments in the EU. The action program emphasized that organized crime existed in the EU in different forms such as drug trafficking, illegal arms and explosives trade, art and

cultural property theft, illegal immigration, vehicle theft, and money laundering. For that reason, they stated that detailed information should be exchanged on a regular basis between relevant organizations (Gregory, 1998).

German Chancellor Helmut Kohl proposed the creation of a European Criminal Police Office in 1991 to fight international crime. This task was entrusted to Trevi and the Ad Hoc Working Group on Europol was formed to create and organize it (Cali, 2000). In 1993, Trevi Ministers formed the European Drugs Unit (EDU) and this unit replaced the activities of the Trevi Group until Europol became operational (Magliveras, 1998). According to Gammelgard (2001), Trevi was the most significant forum for police cooperation among all EU countries until the Maastricht Treaty came into force.

Critics

The secrecy around its operations has been the primary criticism for Trevi. Though it was formed to combat terrorism at the ministerial level, its mandate and structures were altered to a great extent. This metamorphosis brought in its problems together. The working groups, created under the umbrella of Trevi, were not only generally disconnected from other EU organizations but were also unaware of the other groups' activities. Its structure was believed to be inefficient due to not having a permanent location or secretariat (Klosek, 1999).

The Schengen System

The EU was originally a trade and economic community and the free movement of persons, goods, and services was accepted as a huge step toward a common market. With the Nordic Passport Control Agreement of 1957, movement without passports was made possible between Denmark, Finland, Norway, Sweden and

Iceland. Germany and France also abolished checks at their common border in 1984 by signing the Saarbrucken Agreement, and the Benelux countries wished to join this initiative due to the economic rewards it would bring (Den Boer & Walker, 1993).

In June 1985, an agreement was signed by the Benelux countries, France, and Germany in order to create an area of the free movement of persons, goods, and services by removing the internal barriers. The agreement was named after a small town in Luxembourg, Schengen, where it was signed.

The main topics in the Schengen Agreement were the abolition of checks at internal borders, movement of persons, transport of goods, police, and security, and information exchange (Moore, 1996). The Agreement is also important for the high level of police cooperation it provided among the member states. It arranged for police cooperation including the exchange of information, cross-border observations and pursuits, and controlled delivery (Klosek, 1999).

In terms of sovereignty, a highly sensitive issue among EU members, the Schengen Agreement is believed to be one of the most significant attempts to cope with the problems of transnational crime while preserving sovereignty at the same time (Cali, 2000). Some significant problems delayed the implantation of this agreement but the Schengen Convention was eventually concluded five years after the agreement.

The Schengen Convention

The Convention Implementing the Schengen Agreement of 1985 (hereinafter Schengen Convention) was signed by the five founder states on June 19, 1990 in order to put the provisions of the Schengen Agreement into practice. The Schengen Convention, as would be expected, largely focused on the abolition of internal borders,

movement of persons, visa policy, residence permits, police cooperation, mutual assistance in criminal matters, the Schengen Information System (SIS), and protection of personal data.

Some factors such as the unification of Germany in 1990 and some technical problems postponed the implementation of the Schengen Convention, and meanwhile, Italy, Portugal, Spain, and Greece acceded to Schengen Convention (Anderson et al., 1995; Benyon 1994). The Convention, finally, came into effect and SIS became operational on March 26, 1995 abolishing the internal borders within the 5 Schengen founder states as well as Spain and Portugal.

In 1996, Denmark, Finland and Sweden joined the Schengen group while non-EU members, Iceland and Norway become members of Schengen due to prior agreements with the Nordic countries on border controls (Schulte, 2001).

In 1997, all Schengen acquis was integrated into the Amsterdam Treaty and ultimately subsumed into the EU Framework (Andreas, 2003; Gammelgard, 2001). Therefore, all EU member countries were required to adopt all provisions of the Schengen Convention. Only the U.K. and Ireland, both island states, were permitted to select articles and to partially participate in the Schengen system in 2002. This was due to the geographical position of their countries.

According to Chalk (2000), the U.K. and Ireland never seriously thought about participating in the Schengen arrangements. They considered their sea borders as a barrier against criminal movement (Den Boer & Walker, 1993). They are now exempt from the provisions on cross border operations, surveillance and hot pursuits, asylum seekers, and residency permit issues.

Schengen Information System

The SIS was designed to maintain public order and security through increasing the cooperation among the signatory states' judicial, police, and customs agencies in their exchange of information on people's identities and stolen or lost objects (Elvins, 2003b). It was intended to promote the level of cooperation, particularly in the struggle with organized crime and terrorism. It was based on the belief that the abolition of internal borders and loosening of external borders had made the traditional services offered by Interpol ineffective and that this was needed to augment the fight against drug trafficking, terrorism, and illegal immigration activities (DiPaolo & Stanislawski; Klosek, 1999; Moore, 1996).

Articles from 94 to 100 of the Schengen Convention detail the data on persons and objects that appear as an alert on the SIS. A person who is wanted for extradition, who is missing, who is needed for a court process as a witness, or suspect, who is under discreet surveillance or specific checks as well as those third-country nationals who are declared ineligible to enter national territory – undesirables – are likely to be on the SIS. Data on stolen motor vehicle, caravan, or trailer, firearms, blank documents, registered banknotes, and identity documents such as passports may be entered into the database. In addition to these databases, the SIS also provides residence and visa permits. Simply, the SIS holds a number of specific alerts on people, vehicles and property; and police departments, embassies, consulates, and immigration offices have access to these alerts (Hoey & Topping, 1998). The alerts are deleted from the SIS as soon as the need for the alert does not exist anymore, for instance when extradition has taken place.

Table 1

Request Types in SIS

Article 95	People wanted for extradition
Article 97	Missing persons
Article 98	Requests to locate witnesses and people for court appearances
Article 99	Request for information reports on major criminals and linked vehicles
Article 100	Stolen vehicles, trailers, firearms, identity documents and registered banknotes

Structure

(1) The Central and National Schengen Information Systems: In accordance with Article 92 of the Schengen Convention, each contracting party agreed to maintain a joint information system consisting of a national section. This national data depository, called the National Schengen Information System (NSIS), is a conduit through which certain information can be made available, searched and viewed (Brazier, 2001). A direct data exchange between the various NSIS is not permitted by the Schengen Convention and technically is not possible. All national systems are linked to each other through a central unit, the Central Schengen Information System (CSIS), which is located in Strasbourg, France. CSIS copies and distributes all data received from the NSISs (Klosek, 1999).

(2) Supplementary Information Request at the National Entries (SIRENE): The SIRENE is a permanent physical structure and a human interface of the SIS which is the first contact point for national authorities, end-users and the other SIRENEs. It enables the exchange of supplementary data on persons and items prior to the entry of

a report in the SIS, or following a positive search “hit” in the SIS (EU Schengen Catalogue, Volume 2, December 2002).

In accordance with Article 108 of the Schengen Convention, each contracting party assigns a central authority to operate as a national section of SIS and to issue alerts. The structure of SIRENE depends on the states’ decisions. Belgium, for example, has formed a particular body, the Belgian SIRENE Bureau while the German SIRENE office is a part of the Bundeskriminalamt (BKA - Federal Office of Criminal Investigation). The composition of SIRENE staff varies: mostly SIRENE bureaus consist of officials from police, customs, Ministry of Justice, and Ministry of the Interior. Their tasks and activities are described in detail in a common manual known as the "SIRENE Manual". Each SIRENE Bureau serves 24 hours a day and checks the national data that is to be entered on SIS, and when the data is placed it is then searchable by any police officer in any member state with access to SIS.

In terms of the extradition process, the SIRENE bureaus only submit further information to the relevant authorities when a person subject to an alert for extradition is arrested (Benyon, 1994). They have no responsibility or power to transmit extradition files (Council of the EU, 2003a).

(3) Schengen Joint Supervisory Authority (JSA): In addition to the central and national information systems and SIRENE offices, the Schengen System has a supervisory body, the JSA, which is formed by member countries’ own national supervisory authorities and representatives from other observer countries. Among other tasks, the JSA monitors the implementation of the Schengen acquis, supervises the technical support functions of the SIS, and examines any problems of application or

interpretation that may arise during the operation of the SIS (Article 115 of Schengen Convention).

Police Co-operation and 'Hot Pursuit'

Policing problems related to borders inspired the Schengen system. Although there were many bilateral and multilateral agreements enhancing judicial and police cooperation, the borders were still the huge obstructions and the traditional extradition process was usually considered ineffective due to the delays and refusals. Article 40 of the Schengen Convention enabled police officers of a contracting party to continue their observation in the territory of another contracting party.

Articles 40 and 41 of the Schengen Convention explain operational cooperation among Schengen countries. When the authorized officers start surveillance in their own country, they are allowed to continue surveillance across the border towards another contracting state, with which their State has a common border, provided that established strict conditions are met. Cross-border surveillance is bound to the approval of the concerned state; however, there are exceptional situations in which the surveillance without prior approval is possible (Council of the EU, 2003b). Though hot pursuits are not limited in space or time in the Schengen Convention, some participating countries adopted bilateral agreements to restrict surveillance with a ten kilometer zone on each side of the border (Cloud, 2000).

SIS II

The SIS has been designed to serve eighteen states: 15 EU members, Iceland and Norway, and one in reserve. Bearing in mind that all Schengen arrangements became a part of EU acquis in 1999 and that all EU members have to accept acquis in

full, it was easy to imagine that the capacity of SIS would not be able to cope with all new members after the enlargement.

So, in May 2001, the European Council decided on the development of the SISII, which is to be operational by 2006, in order to improve the capacity, introduce new functions, and benefit from the latest technology. Likewise, the Council Decision of December 6, 2001 declared that the SIS will be replaced by a new system, SIS II, in order to allow new member states to be integrated into the system,

The SIS II is supposed to be a complete investigation system rather than a data reporting system and would focus on prevention and detection of threats to public order and security. There would be no overlap between SIS II and Europol's information systems because the latter concentrates on investigations into organized crime. New data categories would also be added to the SIS II, and the authenticity of documents as well as the identification of illegal residents would be provided to the end-users (DiPaolo & Stanislawski).

The Schengen System and the Fight against TOC

Although the Schengen Convention makes specific reference to just narcotic drugs and fire arms, it has wider implications to include the fight against illegal immigration, vehicle theft and all crimes that involve organized crime groups. For example, hot pursuits are made possible for crimes such as trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, and breach of the laws on arms and explosives.

The alerts for the arrest of criminals and round-the-clock operational SIRENE bureaus help member states combat TOC efficiently. End-users may request discreet

reports on criminals and linked vehicles by placing an alert in pursuant with Article 99 of the Schengen convention. The member states joined the EU last year are expected to participate in the Schengen system by 2007 (DiPaolo & Stanislawski). When the new SIS II is initiated and those states are involved in the system, the existing level of cooperation will most likely be increased.

The SIS has a negative impact on Interpol activities, particularly on services that had been provided to identify wanted criminals at border controls and routine identity checks. With the elimination of internal borders, the screening out of wanted persons from wanted lists ceased accordingly; as a result, the efficiency of Interpol services was weakened to a great extent (Moore, 1996). According to Schulte (2001), the success rate of SIS in terms of searches on wanted persons is at least as good as the searches of Interpol. However, this comparison may be unfair because there is a certain degree of overlap between the tasks of two systems. Also, the Schengen countries give the Schengen alerts precedence over Interpol alerts when both alerts exist for a person at the same time. The Schengen participating countries have been recommended to use Interpol alerts only in exceptional cases inside the Schengenland. For instance, there is no alert for stolen works of art in SIS. In such exceptional cases, the Schengen countries are encouraged to use Interpol alerts in Schengenland (Council of the EU, 2003a).

Critics

The comprehensive nature of SIS has seen a major threat to the privacy rights of the European citizen. It is believed that the protection of citizens' privacy has not been expanded at the same pace as the SIS. Also, when a contracting party assesses a third

country's citizen inadmissible and reports this individual to the SIS, he/she becomes restricted from the whole Schengen area (Klosek, 1999).

On the other hand, although SIS is being worked on to increase its capacity, the enlargement of the EU may pose some unexpected problems during the adaptation and implementation of the new SIS II.

Europol

There are contradictory opinions about the exact origins of European Police Office (Europol). Fijnaut says that the idea of a European policing office was discussed at a meeting of Bund Deutscher Kriminalbeamter (Criminal Police Association) in 1974 (as cited in Benyon, 1994). Actually, it is not that important whether it has roots in the 1970s or whether it originated from the Trevi group or is just the successor of the EDU. The important point is that the same states in Europe are usually willing to promote cooperation levels and create novel systems to crack down on transnational crime.

As in the Schengen case, again Germans were the pioneers and the strongest proponents of the concept of a single European Criminal Police Office. In June 1991, German Chancellor Kohl made the first official proposal at the European Council meeting in Luxembourg for the creation of Europol. This proposal was adopted at the Maastrich Summit in December and agreed that Europol should be recognized under the new Justice and Home Affairs Title of the Treaty on European Union (TEU). The job to create Europol was remitted to Trevi and in the same year the Trevi Ad Hoc Working Group on Europol was established to prepare the draft of the Europol Convention (Cali, 2000; Den Boer & Walker, 1993).

Treaty on European Union (Maastrict Treaty)

Article K.1.9. under Title VI “Provisions on Cooperation in the Fields of Justice and Home Affairs” of the TEU constitutes the basis for the creation of Europol. This article asks member states to regard the following area as a matter of common interest: “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)."

The TEU shifted the focus to greater levels of cooperation, and it is generally accepted that through adding the third pillar of "Cooperation in the field of Justice and Home Affairs", the TEU has extensively contributed to the development of police cooperation within the EU, and a solid legal basis was provided to European policing efforts with the third pillar (Chalk, 2000; Hoey & Topping, 1998). It was also seen as a sign of understanding that the struggle with international crime should take place on a supranational level (Klosek, 1999).

On the basis of Article K.3 of the TEU, the EDU, the first stage in the development of Europol, was set up as an interim measure by the Ad Hoc Working Group on Europol (Elvins, 2003a). It became operational in February 1994 and was designed to exchange and analyze information and intelligence concerning illicit drug trafficking. Its mandate was quickly expanded to include trafficking in nuclear material and human beings, illegal immigration networks and money laundering (Gregory, 1998). The EDU has not been able to keep personal data in a central database, which has limited its activities to a great extent (Cali, 2000; Das & Kratcoski, 1999; Elvins, 2003a).

Soon after the EDU became operational, the Europol Convention was signed on July 26, 1995 setting up the structure to complete the Europol mandate in Article K.1.9. in the Maastrict Treaty. The Convention requires national units to be established by each member state and a liaison officer be designated to represent their respective interests among Europol (Moore, 1996). The convention mostly refers to database matters and envisaged a system of information exchange for the purpose of preventing and combating terrorism, drug trafficking and other serious forms of international crime (Den Boer & Walker, 1993; Klosek, 1999; Tupman & Tupman, 1999). Following the ratification process, this convention entered into force in October 1998; nonetheless, it was not until July 1, 1999 that Europol took over from the EDU (Cali, 2000; DiPaolo & Stanislawski; Elvins, 2003b).

Amsterdam Treaty

The Amsterdam Treaty amended the TEU by describing the Union's objectives as: "to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime." The Amsterdam Treaty not only increased the visibility of the Justice and Home Affairs area but also broadened the mandate and functions of Europol formally by the reworked provisions (Gregory, 1998).

It is considered that Article K.2 constitutes a legal basis for Europol's operative powers (Gregory, 1998). Article K.2.1 explains the 'common action' phrase in the context of police cooperation which basically include operational cooperation between the competent authorities for the prevention, detection and investigation of criminal

offences, and the collection, analysis and exchange of relevant information particularly via Europol. Moreover, Article K.2.2 (a) requests the Council, within five years of entry into force of the Treaty, to enable Europol "to facilitate and support the preparation, and to encourage the co-ordination and carrying out of specific investigative actions by the competent authorities of the member states, including operational actions of joint teams comprising representatives of Europol in a support capacity." It means that, in addition to the information and intelligence functions Europol will be able to join the Member State police in specific police action (Cali, 2000; Rauchs & Koening, 2001).

Mandate and Structure

The main objective of Europol, as explained in Article 2 of the Europol Convention, is to improve the effectiveness and cooperation of member states in the prevention and combating of terrorism, unlawful drug trafficking, and other serious forms of international crime. Article 3 of the said convention lays down Europol's five basic duties to realize this objective:

1. Facilitating the exchange of information between member states;
2. Obtaining, collecting, and analyzing information and intelligence,
3. Informing the competent authorities of the member states of information concerning them, and of any connections identified between criminal offenses;
4. Assisting investigations in member states by sending all related information;
5. Maintaining a computerized system of data collection and information.

Article 2 also determines the conditions when cooperation among member states will take place. First, factual signs that an organized criminal structure is involved must exist. Second, at least two member states must be affected by the forms of crime. Third,

the consequence of the crime must be significant enough to necessitate a common approach (Brazier, 2001; Cali, 2000; Klosek, 1999).

Europol was established to combat and prevent transnational organized crime including terrorism and drug trafficking. Regardless of the connection to the latter two, Europol also deals with other international criminal activities including: illicit trafficking in arms, ammunition, and explosives, illegal immigrant smuggling, illicit trade in human organs and tissue, kidnapping, racism and xenophobia, racketeering and extortion, corruption, money laundering, child pornography, and counterfeiting of the euro (DiPaolo & Stanislawski; Guymon, 2000; Rauchs & Koening, 2001). Although, Europol was originally restricted to preventive work in particular crime categories, its functions were expanded by the Amsterdam Treaty to give operational powers (Gregory, 1998).

The Organizational Structure of Europol

As to its structure, according to Article 27 of the Europol Convention, Europol is composed of five organs: the Management Board, the Directorate, the Financial Controller, and the Financial Committee.

(1) Management Board: Europol has a Management Board which consists of one representative from each Member State. Acting under the power of the Justice and Internal Ministers of the Council, the Management Board has broad political control and supervisory functions. The powers and responsibilities of the Management Board are laid out in Article 28 of Europol Convention. Meeting twice a year, the Board discusses the issues concerning the activities and future developments of Europol, adopts a general report on Europol's activities during the previous year. The representative of the member state holding the Presidency of the Council chairs the board; therefore, the

member states are provided equal opportunity to influence Europol's activities (Cali, 2000).

(2) Directorate: The Central Office of Europol is located in The Hague, Netherlands. Taking into consideration the opinion of the Management Board, the Council of Ministers for Justice and Home Affairs appoints a director who heads Europol for a five-year period. Among other tasks assigned, the Director performs the daily administration and controls the performance of the tasks given to Europol. The Director is accountable to the Management Board for his duties and may only be dismissed by the Council (Article 29 of Europol Convention).

As for the financial issues, there is a controller appointed by the Management Board who monitors the expenditure and collects the income of Europol. Also all budgetary and financial matters are prepared and discussed by a Financial Committee which consists of one budgetary representative from each Member. In addition to these bodies, the Europol convention requires the creation of national units and liaison officers.

(3) National Units: Each Member State is entitled to form a National Unit in pursuant to Article 4 of the convention. Acting as a connection between the members and Europol, the National Units ensure that the operations of Europol are in accord with the legislation of the respective member states (Klosek, 1999). According to Article 4 (4), the National Units indeed deal with all processes about information and intelligence that correspond with the Europol mandate. They send, receive, evaluate, request relevant information and intelligence as well as ensure that all exchanges of information comply with the national law.

(4) Liaison Officers: The Europol Convention, in Article 5, asks each national unit to assign one liaison officer to Europol headquarters in order to represent their National Units. The Liaison Officers work as a conduit to facilitate the exchange of information between the National Units and Europol. They are authorized access to Europol files and to receive and send information within the frame established by the Convention (Cali, 2000).

Supervision

(1) Council of the EU: Europol is held responsible to the Council of Ministers for Justice and Home Affairs. The Council controls the functions of Europol and appoints the Director as well as the Deputy Directors. It adopts not only the budget but also a number of important regulations related to Europol's work and submits a special report on the work of Europol to the European Parliament every year (www.europol.eu.int).

(2) Joint Supervisory Body: Each Member State creates a National Supervisory Body, an independent organ, to monitor the information-handling activities of Europol regarding their respective national laws (Article 23). Two representatives from these national bodies compose the Joint Supervisory Body - JSB, the board responsible to review the activities of Europol in terms of data storage, process, and utilization to make sure that human rights are not violated. The members of the JSB are appointed for five-year terms. Other organs are not allowed to instruct JSB in the course of its duties (Article 24). Acting as an internal accountability mechanism, the JSB primarily ensures that the Europol Convention is implemented properly (Cali, 2000).

(3) Joint Audit Committee (JCA): The Court of Auditors of the European Communities assigns three members to the JAC for a three-year term. During an

annual audit, the JAC controls all revenue and expenditures, establishes the financial position of Europol, and assesses whether financial management has been trustworthy (www.europol.eu.int).

These entities are designed to ensure that the operation of Europol is conducted according to the Convention and within the laws of the member states; therefore, they are believed to provide an extensive mechanism of accountability for Europol (Cali, 2000).

Europol and Legal Issues

The establishment of Europol is based upon the TEU in which the member states commit themselves to establishing common Union wide systems for exchanging information. The specific Article K.1(9) specifically envisions and authorizes a European Police Office for the purpose of promoting police cooperation to achieve the objectives of the Convention (Cali, 2000). The Political Declaration on Police Cooperation annexed to the TEU, on the other hand, proves member states' dedication to explore new ways to coordinate national investigation and search operations and to create new databases (Gregory, 1998).

Europol's Information System

The Europol Convention, Articles 7 through 9, requires and details the development and maintenance of a computerized system of information to be used by Europol and the National Units. The Europol Computer System (TECS) has three principal components: an information system, an analysis system, and an index system (DiPaolo & Stanislawski).

The data entered into the system should relate to people who are suspected or have been convicted for an offence for which Europol is competent. Data may also be collected for people who are – because of serious grounds – likely to commit crimes covered by the Europol scope (Klosek, 1999). When a person falls into one of these categories, his/her personal data plus information regarding suspected or actual criminal activity are added to the TECS.

Europol and the Fight against TOC

Many states placed the OC phenomenon on their agenda as a high profile political problem in the early 1990s, and as a result, the policies and solutions produced against such threat shaped the EU Justice and Home Affairs pillar and the role of Europol to a great extent (Gregory, 1998). The full support given by the politicians, its concrete legal basis, and the advantage of having a small number of members to mobilize the promotion of Europol's efficiency in the police cooperation field (Anderson et al., 1995). The dynamic nature of the decision-making system in the EU enables Europol to adapt itself to the new crime trends.

The scope of Europol's mandate provided by the Europol Convention indicates that Europol was created to prevent and combat TOC including many crime types such as drug trafficking, illicit trafficking in arms, and illegal immigrant smuggling which require the involvement of OC groups by their nature. Moreover, when the powers of Europol were extended in 2000 to include money laundering, resulting from all forms of crime, some people stressed that this extension provided an open-ended mandate. Though the mandate of Europol is officially kept limited, such a point of view seems to be correct since most crime types involve the handling of money at some stage.

Europol has been issuing EU Organized Crime Situation Reports annually as well as overviews on other crime types so that awareness about transnational crime is raised. Apart from the investigations in which it has been involved, Europol has organized seminars and forums on various crime issues such as organized crime and money laundering (Rauchs & Koening, 2001).

By a team of analysts, Europol assesses the general crime reports and intelligence analyses, which, according to Schulte (2001), is a form of successful response to organized crime. Europol analyzes the information purposefully on a regular basis in order to recognize any links between several cases and then start investigations.

Since the OC activities are not restricted to certain EU member countries, such activities call for a comprehensive struggle together with the neighboring states and other organizations. Realizing this fact, Europol helped newly accessed countries fulfill the requirements needed in order to become a member of Europol so that the enlargement would strengthen the existing police cooperation. Europol also signed bilateral operational or strategic agreements with states such as the U.S., Romania, Turkey, Bulgaria, Norway, Iceland, and Russia, and with international organizations such as Interpol, World Customs Organization and the UN Office on Drugs and Crime. Thus, Europol collects information not only from the EU member states but also from the third parties, and when the agreements allow, it transmits personal data to these third parties (DiPaolo & Stanislawski).

Critics

In terms of fragmentation as a permanent characteristic of the transnational policing system, some academicians criticized Europol to add another administrative level to an already complicated system. Because the police cooperation operates on the basis of information exchange and the maintenance of large computer databases, it is possible that the similar bodies formed to ensure security would increase the complexity and lessen the efficiency in the police cooperation field (Tupman & Tupman, 1999). However, there are also contrary ideas about the emergence of Europol that it would contribute to the unification of police communications and knowledge transfer (Sheptycki, 1998).

Some people assert that Europol was created without an effective mandate, and until the emergence of Eurojust in December 2001, the unit designed to cooperate between Europol and judicial authorities about criminal prosecution, the question how Europol would prosecute criminals was vague. Such flaws hobble the fight against OC groups.

Furthermore, even after Europol's powers were expanded and became operational, many states still consider Europol as an intelligence sharing system and prefer using their old investigation methods rather than forming joint investigation teams with Europol officers (Elvins, 2003a). On the other hand, the absence of a common criminal justice system and a federal structure may impede the full application of Europol's powers (Gregory, 1998).

Conclusion

Many academicians agreed that Interpol's strength stems from its wide-ranging membership but this diversity has also been perceived as a weakness by others (Den Boer & Walker, 1993; Klosek, 1999). Interpol is a strictly neutral organization that does not require the loss of state sovereignty to operate. It offers valuable services to law enforcement agencies around the world, while, at the same time, developing better services.

Approximately 2,000 criminals, subjects of Interpol notices or diffusions, were arrested world-wide in 2003 which, to some extent, helps prove its success in fighting international crimes (www.interpol.org). Still it is an undeniable fact that Interpol needs the continued support and concern from governments as some of the difficulties or challenges are beyond the scope of the police to resolve (Das & Kratcoski, 1999; Gros, 2003).

The struggle with OC calls for swift counter policies and sound measures. In this context, the EU member states can be considered unsuccessful as the development of SIS and Europol took a long time. The detriment of this delay or failure might be prevented or mitigated thanks to the existing Interpol services or strong national police forces. The SIS became operational ten years after the Schengen Agreement had been signed; likewise, it took seven years for Europol to become active after Kohl's proposal. In order to pose a credible threat to international crime within the EU, all member states should frankly support international police cooperation efforts and reconsider their sovereignty concerns.

Even though some EU members appeared to be reluctant to offer full support in police cooperation (Chalk, 2000), and there have been overlapping circles among the functions, specialization, and strategies of various European organizations created in this field up to date, all attempts produced experience and contributed to the development of better systems.

Trevi, for example was successful to some degree but was not accepted as truly effective international police cooperation (Cali, 2000). The Schengen system was created but limited to only five neighboring countries; finally becoming a part of the EU acquis and binding for all EU member states with the exception of the U.K. and Ireland. The SIS II is still being developed. Similar to Interpol, the information exchange and large databases are the basic components of the SIS and Europol.

Europol gave support to 3,400 cases in 2002 and 4,700 cases in 2003 (Europol, 2004). The numbers indicate that there is a significant increase in the use of Europol. It is clear that Europol is getting stronger day-by-day. With the help of the political environment and developments in judicial cooperation field, it seems that Europol will replace the role of Interpol within the EU. In his article, Klosek (1999) asserts that once more federalization takes place in the EU, Interpol will eventually become an outside contact point with other police forces as it is now in the U.S.

CHAPTER 3

METHODOLOGY AND LIMITATIONS

In this chapter, the researcher examines (a) the research questions, (b) the research purpose, and (c) the methodology and limitations. The main purpose of this research is to emphasize the importance of workable extradition instruments to fight transnational organized crime (TOC) in Europe more successfully. The researcher provides detailed information about the TOC problem in Europe as well as the major international policing efforts and the extradition process for a better understanding of the significance of extradition. The methodology of the study consists of a literature review and comparison of extradition methods. The limitations of the research are mentioned by the researcher. Overall, in this chapter, the researcher has created the road map of the entire study to make it clear, useful and valid.

The Research Questions

The researcher has one primary research question; “How to strengthen the policing efforts to effectively struggle with TOC in Europe?” In order to address this primary question, the researcher has identified the following analysis questions:

1- What are the major reasons for the rise of the TOC in Europe?

2- What international police cooperation efforts exist to deal with the TOC?

3- How can methods of extradition be improved in order to combat TOC in Europe?

The Purpose of the Research

Since the end of the Cold War, the TOC threat has continued to grow in Europe. In addition to the disappearance of the Iron Curtain, other factors such as the abolition of internal borders within the European Union (EU), extensive immigrant floods, globalization, and ethnic conflicts contributed to the increase in TOC activities. The opportunities and resources existent in wealthy European countries attracted many organized crime (OC) groups from outside the EU. Besides the indigenous OC groups, Russian, Turkish, and ethnic Albanian OC groups have become more dominant in certain markets in the EU.

In this study, the researcher attempts to explain the various dimensions of transnational criminality, provides detailed information about the international efforts in the police field in Europe, and evaluates extradition as an indispensable tool to advance police cooperation. There are four reasons for this research:

First, the researcher wants to give a general idea about the TOC threat in Europe. In the study, the reasons behind the sharp increase in the TOC activities are explored. The researcher provides information about the TOC groups and their activities. Underlining the mobile and transnational nature of OC groups, the researcher emphasizes the need for international police cooperation as well as workable and efficient international legal instruments.

Second, the researcher desires to provide a comprehensive understanding of international police cooperation efforts. The researcher explains the historical evolution of international police cooperation efforts which go back to the second half of the 19th century and then gives detailed information on the structure, mandate, and services of

major international police cooperation institutions formed in Europe – Interpol, Trevi, the Schengen System, and Europol. This part enables readers to better understand how the international cooperation systems works, their activities, and weaknesses.

Third, the researcher wishes to provide knowledge about the extradition mechanisms. In order to do that, the traditional extradition procedure, well-known barriers to extradition of criminals, and the major extradition agreements such as the 1957 European Convention on Extradition, UN Model Treaty, and European Arrest Warrant, are explained. Moreover, the importance of extradition in international police cooperation is stressed.

The last purpose of this study is to emphasize the need for fast, effective, and workable extradition agreements between states to combat transnational criminality thoroughly. The researcher compares two extradition instruments: the 1957 European Convention on Extradition which is applicable between the EU member states and third states (non-EU states), and the new European Arrest Warrant which is only used among the EU member states. The tables prepared by the researcher are an attempt to make it easier to understand the fundamental differences between these methods.

It should be clarified that this study is not to find direct solutions to the TOC phenomenon in Europe. Rather, the matter recommended by the researcher is – to a great extent – to contribute to and further develop the efficiency of international policing against international criminality in general and the TOC in particular.

Methodology

To address the research questions of concern in this descriptive study, a comprehensive literature review approach was used to analyze (1) the TOC phenomenon in Europe, particularly the causes behind the increase in TOC activities in the last two decades as well as the operational OC groups, (2) the major international police cooperation efforts contributing to the fight with TOC in Europe. In order to completely cover the research questions, a thorough and comprehensive literature review was done by the researcher as a method. In this study, not only library resources but also the internet played a critical role in gathering the most up-to-date and vital information.

It is important to mention that the researcher, as a law enforcement member, has worked for the Interpol Ankara – the National Central Bureau attached to the Turkish National Police for eight years. During that period of time, he attended international meetings and seminars held by Interpol and EU institutions, and found unique opportunities to gain enough experience and understanding of the transnational crime concept, mutual assistance matters, and international police cooperation. The researcher, during his service, mostly worked on extradition matters and developed valuable knowledge on multilateral and bilateral extradition agreements. He traveled to almost every European country for the purpose of carrying out the extradition of criminals and discussed extradition matters, such as laws and barriers in the process, with colleagues in those countries. He also gave lectures to the law enforcement officers from neighboring countries concerning extradition issues at the Interpol courses organized annually by the Turkish National Police.

In this study, the researcher used his expertise to make analysis on traditional and novel extradition procedures. The researcher compared two extradition methods, particularly in terms of the barriers they impose in the extradition process and creates a table to demonstrate the fundamental differences between the methods.

Although international police cooperation is extremely important per se, it should be considered as only one part of the whole solution to the TOC problem in Europe. More research and a greater consideration of all relevant variables would be necessary to provide a comprehensive TOC control strategy. Therefore, rather than direct recommendations about the prevention of TOC, this particular study focused more heavily on the identification of the TOC threat in Europe, the major efforts rendered by European countries towards effective international police cooperation and how to improve extradition methods to struggle with the TOC more efficiently in Europe.

The present study consisted of three stages: the preparation for the study, data collection, and the analysis and conceptualization of gathered data.

In the preparation step, the researcher decided what to study, how to organize the parts of the research, and what to include or exclude. Then he made the primary searches from the University of North Texas (UNT) library catalogs, electronic databases and internet web-sites to ensure that enough data exists.

In the data collection step for this study, the UNT library catalogs and various electronic resource databases, such as criminal justice, social science, sociological and criminological abstracts have been searched to find books and articles on the subject by the researcher. During those searches “organized crime,” “transnational organized crime,” “definition of organized crime,” “organized crime related issues,” ‘drug

trafficking," "illegal immigration," "globalization and crime," "international efforts towards organized crime," "international police cooperation," "Interpol," "Trevi," "Schengen," "Schengen Information Systems – SIS," "SIS-II," "European Drugs Unit," "Europol," "international mutual assistance," "extradition," "extradition convention," and names of certain OC groups have been used as key words. In addition, "Sage," "Scholar Google," "Google," and "Yahoo" search engines have been utilized to provide additional information and documents on the research subject, and to give careful regard as to whether the information was appropriate to this research proposal. Besides the academic books, articles and other sources, some police reports and police magazines and police agency manuals have been used by the researcher in data collection.

During the data collection stage, the researcher only focused on major international police cooperation efforts created in Europe. Likewise, while studying OC groups, only those OC groups which are major, dominant, active, and from outside the EU (except Italian OC groups) were selected to emphasize the mobility and adaptability of criminals.

Only the directly related extradition conventions were included in this study. The comparison was made between the 1957 European Convention on Extradition and the European Arrest Warrant since the former was used among the EU member states until the last year and still applicable with the third countries (non-EU members), and the latter is solely utilized among the EU member states. In other words, one represents the traditional extradition procedure while the other represents novel procedure. The UN Model Treaty as well as the 1995 Convention on simplified extradition procedure between the EU member states and the 1996 Convention relating to extradition

between the EU member states were also included in this study for a better understanding of the evolution in extradition matters; however, they were excluded from the comparison because they have never entered into force due to limited ratifications.

All of the gathered information was carefully classified in order to prepare the thesis outline. Classification was done in accordance with the four research purposes: transnational organized crime, Interpol, police cooperation efforts within the EU (Trevi, Schengen System, and Europol), and extradition agreements. After that, all classified information and documents were analyzed to provide a comprehensive literature review and to evaluate the last updates in the police cooperation efforts and extradition regulations. This analysis was carefully conducted to determine if more important sources would be needed to cover the research questions. In order to avoid biased information, personal interpretation and other research-based problems, such as reliability, multiple sources that provide a broad range of viewpoints have been examined by the researcher in this study. In other words, information and documents on the research questions have been verified through the use of multiple sources to provide a neutral and valid study.

During the analysis of the gathered data and information, the researcher considered the publication date of the books, articles and other sources in terms of getting up-dated information as far as possible because the issues studied here are very dynamic. For instance, the EU authorities are modifying their regulations and policies frequently; the process for whole integration and harmonization obviously continues. An overall assessment has been conducted at the final stage of this research.

Limitations

There are a few limitations of this study. First, this research only examines police cooperation efforts in Europe as a response to the TOC. Therefore, the issues discussed in this study do not represent the matters of the international police cooperation institutions other than that of Europe. Also the researcher does not attempt to cover every effort of police cooperation in each European country. Rather he focuses on remarkable cooperation steps in the EU which affect the majority of people in Europe.

Secondly, all of the information presented in this study has been derived from openly available sources. It is important to note that secrecy in policing issues may have an important effect on the openly available sources on the subject. Members of such police institutions are not usually allowed to communicate certain types of information without authorization and are bound by special restrictions.

Third, the researcher also faced problems in finding books and articles on Interpol published in recent years. Since the history of Interpol goes back to the early 1900s, the concern for the organization seems to have faded away in the last decade. As a result, the researcher was limited with the information displayed on the official web site of Interpol or with the relatively old sources. He was unable to track the recent projects of the organization from an academician perspective. Moreover, as indicated by Deflem (2002), academic studies on Interpol are few in number and the majority of these are restricted with legalistic perspective and the viewpoints of the police authorities. These studies, therefore, have much in common with the publications of Interpol which have been prepared by the participants in the organization.

Fourth, the researcher only explained and compared extradition agreements which are multilateral and which are largely being used in Europe. Those bilateral instruments are excluded in this study.

Fifth, although the researcher did his best to use timely information, it is not possible to follow every recent development that is relevant to this study. Bearing in mind the very dynamic nature of the EU organs and the ongoing harmonization process, this study may contain information which has already been modified or updated.

Sixth, the researcher was not able to provide good examples to prove how much the European Arrest Warrant contributed in the fight against international criminality as it has only been in effect in 24 EU member states (as of the end of February 2005, Italy was still not ready to apply EAW) for less than six months. It appears soon to obtain comprehensive reports on its application.

Last but not least, due to the language problem, the researcher was unable to use the valuable sources which were prepared in German, French or other European languages. Also, there appears to be a scarcity of research and very few countries in Europe, according to Maver (2003), which have compiled research for organized crime. Maver attributes the reasons for this lack of such research to be either the inability of the institutions such as Interpol and Europol, or the unwillingness of countries to publish such research.

CHAPTER 4

EXTRADITION: A TOOL TO FURTHER INTERNATIONAL POLICE COOPERATION

Introduction

The primary task of police forces all around the world is to protect society through measures taken to prevent crime. Once an offence is committed, the police are expected to find the perpetrators and bring them to justice. In today's world, where the borders are permeable or completely lifted, the criminals easily flee abroad. This makes policing efforts restricted within national borders often fruitless. The high mobility and adaptability of the criminals as well as the nature of transnational crimes calls for international police cooperation. Most of the international policing efforts, explained in Chapter 2, such as Interpol notice system, Interpol's I-24/7 communications system, and Schengen alert system, have been developed primarily to locate and arrest the criminals beyond the borders with the goal being to eventually extradite them. In other words, the arrest of criminals beyond their national borders and the extradition of them is the main "raison d'être" of international police cooperation.

As was explained before, extradition and international search warrants were one of the topics discussed during the International Criminal Police Congresses held in 1914 and in 1923 (Deflem, 2002). Even though police cooperation has resulted in the arrest of fugitives beyond their national borders, if the extradition requests are rejected or delayed by months how the national police forces are supposed to successfully fight

international criminality. These persistent problems with extradition continue to make many policing efforts futile.

The ability to quickly extradite criminals contributes to the internal security of states by preventing criminals from evading legal prosecution and punishment (Carberry, 1999). Therefore, extradition is often considered to be the most important means of international legal assistance in criminal matters. It is also an inseparable part of international police cooperation. Believing that the present and future of the police cooperation depend on improvements in international judicial matters, this chapter focuses on extradition issue. It compares the traditional and the novel extradition conventions and explores how the methods of extradition can be improved in order to combat transnational organized crime (TOC) in Europe.

Extradition Defined

Extradition is a formal process by which a criminal suspect held by one state is handed over to another state for trial or, if the suspect has already been tried and found guilty, to serve his or her sentence. Traditionally, the sovereign state holds the right as to whether or not to grant extradition to another state. Even the relevant court approves its admissibility all governments remain free to reject extradition (Wagner, 2003).

The roots of extradition may be traced back to medieval and even ancient societies where it was used as a matter of good will and courtesy between states. The earliest known extradition treaty was signed in 1280 B.C. between the Egyptian Pharaoh Ramses II and the Hittite King Hattusli III. It allowed for the return of common criminals between the respective kingdoms. In Europe, the first arrangement concerning extradition was made between England and Scotland in 1174 A.D. (Rebane, 1996).

Extradition Rules

(1) Principle of reciprocity: This principal espouses the right to equality and mutual respect between states in international law. One state has the obligation to handle another state's requests in a manner similar to how its requests have been handled. For instance, in the absence of treaty regulating extradition, countries may extradite an accused person on the basis of reciprocity. In other words, there is an implied agreement that extradition will work both ways (Wagner, 2003). If a treaty exists, states still takes this principal into consideration, for example, for the reservations made to the treaty provisions. Indeed, the matters of reciprocity and mutuality are very important considerations that often influence the level of international cooperation.

(2) Principle of double criminality: In order for an extradition to take place, the conduct under consideration must constitute an offence both in the requesting (the state which seeks extradition) and the requested parties (the state where extradition request is submitted). In a case where the conduct is not a crime and not punishable in the requested state, such situation is called "lack of double criminality" and is sometimes used as grounds for a refusal to extradite. For example, as to the criminality of abortion and euthanasia, there is no world wide consensus. Therefore, an extradition request for regarding such behaviors is most likely to be turned down.

(3) Nature and seriousness of penalty: The offence subject to the extradition request must be serious enough to warrant extradition. Seriousness is usually measured by the term of imprisonment attached to the offence. This term may vary in different extradition agreements. Also extradition is only permissible for punishments that deprive human liberty.

(4) Principle of speciality: This principal prevents the requesting state from further prosecuting or punishing a person for criminal conduct other than for those that he was extradited for (Rebane, 1996). However, the requested state may give consent for a further trial or punishment after surrender. Also the person that is surrendered to a state is given an opportunity to leave the state within a certain time period following his prison term. If the person does not leave that territory within determined period or returns there after leaving, then the rule of speciality does not apply. This rule is to protect the individual against prosecution and punishment on additional charges for offences committed prior to extradition and does not apply for the offences committed after the extradition.

(5) Ne bis in idem: Ne bis in idem, also known as double jeopardy, is a widely accepted international criminal law principle which literally translated into English as "Not again about the same." The word 'again' refers to the prosecution of the same crime more than once. It states that a person cannot be prosecuted or tried more than once for the same act (Fletcher, 2003). States reject extradition requests for offences that have already been concluded by other courts regardless of whether the decision was guilty or innocent.

(6) Aut dedere aut judicare: This principal requires states either to extradite or to prosecute any person subject to an extradition request. It is designed to prevent such persons from going unpunished and is used to counter balance the practice of non-extradition of nationals. However, when a prosecution is initiated in the requested state in accordance with aut dedere aut judicare principal, ne bis in idem rule should be taken care of.

Grounds for Refusal

There are some practical problems that exist in the extradition process. They are almost as old as the extradition itself (Plachta, 2003). A number of mandatory and/or optional grounds for refusal still exist in the traditional extradition conventions. These not only provide many refusal options to the judicial authorities but also open the door to political interference. Even though many of these refusals are done in accordance with the extradition conventions, they often weaken international cooperation and policing efforts. It is a fact that some exceptions to extradition are essential to ensure that human rights of the wanted persons are respected. Despite this, there is always a high risk of political intervention and arbitrary decisions particularly in sensitive requests. The following outlines grounds upon which extradition maybe refused.

(1) Double criminality: The states reject the extradition requests when the offence that was committed does not constitute a crime in their legislation. The penal codes and the definitions of crimes may vary from state to state a great degree. For example, while abortion or soft drug use may be legal in one state, they may constitute crime in another. Often states do not grant extradition for offences which are not punishable under their laws.

(2) Political offense: In many states a request for extradition for a political offense is itself grounds for refusal of extradition. Traditionally, this exception has also been used extensively to secure freedom of political and religious opinions. It protects the political offender from a potentially partial trial and helps one state avoid having to take sides in the internal affairs of another state. It also recognizes the legitimacy of political dissent (Rebane, 1996).

If an offence is directed at the State and is intended to affect only the structure of State, it is almost always identified as a “purely” political crime and is rarely extraditable. On the other hand, the other category of “relative” political crime causes some confusion. Relative political crimes cannot be easily separated from political crimes as they combine political goals with ordinary crimes (Carberry, 1999). Some international treaties clearly excluded some serious offences such as aircraft hijackings and hostage-taking from being considered political crimes.

(3) Nationality: Many states do not want to extradite their nationals due to their concerns with the protection of their own nationals or a distrust of the foreign state’s criminal justice systems. There are many differences between the practices of different law systems. European countries, for example, tend to use nationality as a barrier to extradition. They only permit such extradition in exceptional cases. Anglo-Saxon countries, on the other hand, traditionally draw no distinction between their nationals and others for purposes of extradition. The civil law countries usually claim jurisdiction over crimes committed in their territories. They also claim jurisdiction over crimes committed by their nationals abroad. For that reason, they prefer often decline extradition requests for their nationals. This is not the case for the common law countries as they establish only territorial jurisdiction (Harris, 2001).

Non-extradition of nationals continues to endanger the efforts to fight transnational crime. The states applying such rules may become safe havens for their citizens who commit crimes in other countries. Therefore, the multinational conventions encourage states to establish jurisdiction over cases when they refuse to extradite a fugitive (aut dedere aut judicare rule).

(4) Death penalty: States with no capital punishment tend to refuse extradition of criminals when the person faces the risk of being sentenced to death unless the requesting state agrees not to impose the death penalty or not to carry it out if it is imposed. The states that still have capital punishment in their legal systems are opposed to the death penalty exception. They assert that it interferes with the judicial discretion of the requesting state and in so doing violates the sovereignty of another state.

(5) Judgments in absentia: Refusal occurs when the person's extradition is sought in order to carry out a sentence or detention order that has been rendered against him or her in absentia. The requested state may reject the extradition if it considers that his or her defense rights have been violated during the trial process.

(6) Ne bis in idem: If the requested state discovers that the wanted person has already been tried for the same crime, the extradition request is often refused so that the person is protected from double jeopardy.

Establishing double jeopardy can be confusing. The state takes into consideration the judicial proceedings initiated by any state that has jurisdiction over the offence. As a result of these proceedings the requested person may be acquitted or convicted. The sentence may be imposed or pardoned. The relevant judicial authorities may decide not to institute or to terminate proceedings. The existing conventions enable states to consider double jeopardy in order to protect individuals' rights. The states are provided with option to refuse the extradition if double jeopardy is discovered.

(7) Seriousness of the crime: The offence must be serious enough to merit extradition. Some conventions require offenses punishable for a maximum period of at least one year penalty. If the person has already been convicted then they require a penalty for a period of at least four months. For example, a person has been sentenced to 8 months' imprisonment for parental kidnapping. If the same offence entails less than four months' imprisonment in the requested party, then the extradition request is not granted.

(8) Discrimination concerns: When the requested party establishes substantial grounds for considering that the extradition request has been made because of the person's race, religion, nationality or political opinion, it is refused outright. This matter is vulnerable to political intervention because there are no subjective criteria that define "substantial grounds".

(9) Human rights concerns: If there is a real risk that the person wanted for extradition will be subjected to torture, cruel, inhuman, degrading treatment or punishment, the state turns down the extradition request. However, this exception to extradition may easily be abused because there isn't any consensus concerning what causes a "real risk".

(10) Lapse of time: The person requested may become immune from prosecution or punishment if the statute of limitation expires in the law of either state.

(11) Place of commission: According to the law of requested state, if the offence is regarded as having been committed in its territory – in whole or in part – the request may be rejected. Also when the offence is committed out of the territory of the

requesting state, the requested stated may refuse extradition on the condition that their law does not allow prosecution for such offences.

(12) Insufficient proof: The common law countries used to require extradition requests to be accompanied by proof of apparent guilt. This meant that there was enough evidence to persuade a judge in the requested state that the offender could have been convicted in that state. Comparatively, the civil law countries only ask for a minimum amount of evidence and usually are satisfied with a properly certified warrant for arrest. Insufficient proof obstacle seemed to have faded away as the U.K. abolished the “prima facie – at first sight” standard in 1989 and adopted the civil law approach at least for non-commonwealth countries. Likewise, according to Harris (2001), the U.S. is requiring “probable cause” or just sufficient evidence to issue an arrest warrant rather than asking the complete evidence.

Main Extradition Conventions

It is a fact that, in order to escape prosecution, criminals prefer living in states not a party to an extradition treaty with the countries where they commit their crimes. States generally act reluctantly to prosecute or punish individuals for crimes that have occurred beyond their borders but, at the same time they do not want to become a safe heaven for criminals. Such situations compel states to establish international cooperation to ensure that fugitives are surrendered.

There are several bilateral, regional, and multinational extradition conventions. Only those that are considered most helpful in understanding the emergence of the new extradition system in the European Union (EU) have been explained in the next part. The United Nations (UN) Model Treaty has also been included in this section as it was

prepared as a set of commonly agreed standards and helps for a better understanding of extradition concept and its evolution.

European Convention on Extradition of 1957

There are six main topics in international judicial cooperation: extradition of criminals, mutual assistance, transfer of prisoners, enforcement of sentences, transfer of proceedings, and confiscation of proceeds of crime. In 1950s, the Council of Europe, the oldest political organization in Europe, became the main forum for preparing a series of multilateral conventions. Among the conventions produced by the Council of Europe there were four including the European Convention on Extradition that became very popular in Europe (Guymon, 2000; Peers, 2004).

The European Convention on Extradition was signed on December 13, 1957 and entered into force on April 18, 1960. It has been ratified by 46 states and only two of them, Israel and South Africa are not members of the Council of Europe. The European Convention on Extradition became so popular that it has served as a “mother convention” for all further developments concerning extradition (Schomburg, 2000; Wagner, 2003).

Two additional protocols were signed in 1975 and 1978 in order to exclude war crimes and crimes against humanity from the category of non-extraditable political offenses. Also, some provisions about fiscal offences, judgments in absentia and amnesty were supplemented. The members of the Council of Europe also signed the European Convention on the Suppression of Terrorism in 1977, which was designed to facilitate the extradition of persons who have committed terrorist crimes. The latter convention required that a series of offences such as unlawful seizure of an aircraft,

hostage taking and offences involving an attack against the life of internationally protected persons would be kept out of the political offence exemption (Wagner, 2003).

According to 1957 Convention, the Contracting Parties undertake to surrender all persons to each other who are wanted for offences punishable under the laws of both the requesting and the requested states by deprivation of liberty for a maximum period of at least one year or when there is a sentence for a period of at least four months (Article 1 and 2/1). This provision entails the application of the double criminality principal as it states that the offence must be punishable by both states' laws. It first determines how serious the offence should be to warrant extradition and the thresholds - one year or four months - constitute mandatory grounds for refusal. Furthermore, in case the national laws of contracting states do not allow for extradition for certain offences, Article 2 allows for the opportunity to exclude such offences from the application and to instead apply the reciprocity principle for the excluded offences. Such reservations and declarations, which were commonly used by the Contracting states, ultimately encumbered the convention and as a result, this multinational convention became like a patchwork of bilateral conventions.

The 1957 Convention and its protocols provide the following mandatory grounds:

1. Double criminality (Article 2/1),
2. Seriousness of the offence (Article 2/1),
3. Political offences and other offences connected with political offence (Article 3),
4. Military offences (Article 4),
5. Ne bis in idem principle: (a) When final judgment has been passed in the requested state (Article 9/1); (b) if the wanted person was acquitted in the final judgment rendered

by a third state (Article 2/2 of First Additional Protocol); (c) following the final judgment rendered by a third state: (c1) the sentence wholly executed, (c2) the sentence pardoned, (c3) the court convicted the person without imposing a sanction (Article 2/2 of First Additional Protocol),

6. Lapse of time: When prosecution or punishment become statute-barred according to the law of either the requesting or the requested states (Article 10),

7. Discrimination concerns: When the requested state has substantial grounds for believing that the extradition request has been made in order to judge or punish a person for his race, religion, nationality, or political opinion (Article 3/2),

8. Amnesty: If the requested state declares amnesty for the offence subject to the request provided that this state has competence to prosecute that offence (Article 4 of Second Additional Protocol).

The optional grounds provided in these extradition instruments are:

1. Nationality (Article 6),

2. Death penalty (Article 11): As mentioned earlier, 44 out of 46 contracting parties of 1957 Convention are members of the Council of Europe and all have already abolished the death penalty except the Russian Federation which introduced a moratorium on executions but still retains death penalty as a part of its penal code (Karaganov, 2004).

3. Place of commission (Article 7),

4. Judgment in absentia (Article 3 of Second Additional Protocol),

5. Ne bis in idem principle: (a) Offense for which decision not to institute or to terminate proceedings is made in requested state (Article 9/1); (b) final judgment has been rendered in a third state but the offence was committed in the against a person, an

institution or anything having public status, or the requested person has a public status in the requesting state (Article 2/3 of First Additional Protocol).

On the other hand, 1957 Convention arranges time limits only for the delivery of extradition documents during the “provisional arrest period” – the period between date of arrest with a view to extradition and date of surrender – and for the surrender date of persons. The requesting state should send the necessary documents, which must be an original or an authenticated copy (Article 12), through diplomatic channels within 18 days after the arrest or within 40 days provided that the requested state accepts the period extension (Article 16). Once the extradition is granted and the surrender date is established, the extradition should take place within 30 days after the appointed date (Article 18). Apart from these time limits, the relevant courts and administrative authorities are not limited to a certain time period in which to reach a decision on the extradition. There are no limits for provisional arrest periods and it has not been established how long the person can be kept in detention by the requested state after the extradition has been approved. Some of the worst examples of a lengthy extradition process can be found in the U.K. where it used to take about 18 months to be extradited and in some cases, it can stretch out to 6 years (Bennathan, 2003).

In terms of principal of speciality, Article 14 restricts implementation of any judicial process (for example, initiating proceedings, sentencing or detaining) in the requesting state for the offences committed before the surrender except for which the person was extradited. That person may only be proceeded against if the requested state gives consent or if the extradited person, while having full opportunity, does not

leave the territory of requesting state within 45 days of his final release or if he returns after leaving the state.

Indeed 1957 Convention provides a “negative list” explaining the situations when the extradition should be refused. It allows the contracting states to make reservations to the articles. Moreover, various interpretations and loopholes existing in the Convention enable states to present interesting excuses for their refusals. In practice, even if all the requirements are met by the requesting state, unfortunately there is no mechanism to impose sanctions upon states that obviously fail to fulfill their responsibilities stemming from this Convention.

The extradition is a whole judicial process in nature; however, the existence of political intervention in the extradition process is an undeniable part of the process too. In a traditional extradition, the courts are supposed to assess the admissibility of the requests in legal terms and the final approval is usually given by administrative authorities. As a result, a legal process that is relatively smooth and swift for ordinary criminals can become a subject of long lasting discussions and hard bargaining for well known, top criminals. And at this point, the presence of political interference can become particularly evident. For instance, the politicians in the requested state will sometimes not allow the judicial authorities to make the final decision concerning the surrender of a terror organization leader. Therefore, on one hand the politicians support international cooperation efforts against criminals; on the other hand, they, at least in my opinion, often prefer the legal instruments that allow for leeway in their maneuvering.

Though 1957 Convention has filled an enormous gap in international cooperation since 1960, the problems arising from the Convention have become more evident day by day and this traditional extradition method is now considered to be slow, inefficient, problematic, and outdated by the contracting states.

UN Model Treaty

Some forms of international crimes such as organized crime, drug trafficking, and terrorism, due to their international nature, have proven the inadequacy of bilateral approach. The existing regional and multilateral extradition arrangements, on the other hand, provide various exceptions to the obligation to extradite and thereby weaken their efficiency. Furthermore, the political, cultural, and legal differences bar the emergence of universally applicable, multilateral extradition treaty. Based on these facts, the UN created a new Model Treaty on Extradition in 1990. It was designed to help states adopt extradition treaties based on a set of commonly agreed standards designed by experts in the field. It was believed that once a large number of countries choose to follow this guide, greater harmonization and an increase in the number of extraditions would likely result (Guymon, 2000). Following a review process, some complementary provisions were added to Model Treaty in 1997.

Similar to other extradition treaties, at the beginning the Model Treaty imposes on states a general obligation to extradite, so long as the extraditable offence is serious enough to merit extradition. However, the Model Treaty does not articulate what is the appropriate measure and leaves states to decide whether an extraditable offence should be punishable by either one or two years' imprisonment. This flexibility can be observed all over the Model Treaty. Since it was designed as a guide, it provides for a

degree of flexibility by including footnotes to indicate the points where states may prefer a greater or less extensive extradition obligation.

The Model Treaty gives seven mandatory exceptions to the extradition obligation and eight optional exceptions. The list of mandatory grounds (Article 3) includes:

1. Political offence,
2. Discrimination concerns: Requests made on the basis of person's race, religion, nationality, ethnic, origin, political opinions, sex or status,
3. Military offences,
4. Ne bis in idem principle: Offences for which there has been a final judgment in the requested state,
5. Lapse of time and amnesty: Requests that have become immune for any reason under the law of either state such as lapse of time or amnesty,
6. Humanitarian considerations (i.e. torture or degrading treatment possibility in the requesting state),
7. Judgments in absentia.

The most innovative one among these exceptions was the humanitarian consideration clause. In Article 3/f, it makes past incidences of unfair punishments or unfair trials sufficient grounds in themselves for refusing extradition.

As for the optional exceptions (Article 4), the Model Treaty includes:

1. Nationality,
2. Death penalty,

3. Ne bis in idem principle: (a) Offences for which there has been a decision either not to institute or to terminate proceedings in the requested state; (b) offences for which a prosecution is pending in the requested state,

4. Place of commission: (a) Offences committed outside the territory of either state; (b) offences committed within the territory of the requested state,

5. An extraordinary and ad hoc tribunals clause, and

6. Additional humanitarian consideration such as age, health or other personal circumstances of the person.

The footnotes to the Model Treaty further suggests that the imposition of a life or indeterminate sentence, fiscal offences, and a sufficient evidence clause may be considered as additional optional exceptions.

The Model Treaty allows for simplified extradition procedure (Article 6). Provided that the person wanted overtly consents to his surrender through a simplified procedure, the requested state may approve extradition only upon the receipt of provisional arrest request. In such situation, the requested state does not need the whole official extradition documents to reach the decision. Moreover, in standard procedure, the Model Treaty does not require the certification and authentication of the extradition documents (Article 7). Similar to 1957 Convention, this treaty also establishes 40 days time limit from the date of arrest for the delivery of extradition documents but imposes no time limit for the provisional arrest period and for the surrender after the approval of extradition.

The UN formed the Model Treaty as a guide for states that had not yet established treaty relations with other states in the area of extradition and for states that wanted to revise existing treaty relations. It is a helpful tool to further international cooperation in extradition matters as it is the accumulation of many years of experience and provides commonly accepted and respected rules and provisions. However, neither the content nor the structure of the Model Treaty is much of a departure from the traditional extradition laws; and it does not offer important innovations. Moreover, the footnotes used for additional grounds for refusal may damage the effectiveness of a treaty.

The 1995 and 1996 EU Extradition Conventions

Interdependency resulting from geographic proximity and common crime problems has forced the EU members to explore solutions to the problems that arise during the traditional extradition procedure. The bilateral approaches to improve the situation by modernizing the procedure and updating the existing legal instruments, have achieved limited results. It was believed that controlling international crime may only be attained through regional agreements between close countries that share common tradition, culture, and values (Das & Kratcoski, 1999; Plachta, 2003).

In order to supplement and facilitate the 1957 European Convention on Extradition, two Conventions were prepared in the 1990s: the 1995 Convention on simplified extradition procedure between the EU Member States (1995 EU Extradition Convention) and the 1996 Convention relating to extradition between the EU Member States (1996 EU Extradition Convention) (Jimeno-Bulnes, 2003). These EU conventions represent new trends that are more flexible and less rigid. First, extradition procedures

and requirements were simplified. Also, the political offence exception lost its importance by making all serious offences extraditable (Carberry, 1999).

As the name of the 1995 EU Extradition Convention suggests, the simplified extradition procedure was a part of this convention. It requires consent from the person to be extradited and only when the consent is given does the simplified procedure apply. In this simplified procedure, the requesting state is not required to submit the extradition documents for surrender (Article 3/2). The competent authority in the requested state informs the person who has been arrested of the request for his surrender and of the simplified procedure. The consent of the person is recorded and once given, it cannot be cancelled (Article 7).

The 1995 EU Extradition Convention allows direct communication between both national competent authorities of the requesting state and the requested states, and uses brief time limits for the procedure. The requested state has ten days following the provisional arrest to notify the requesting state whether or not the arrested person has given his consent (Article 8). It is still possible to apply the simplified procedure if the person gives his consent after the expiration of the ten days limit (Article 12). The final decision on the extradition should be notified within 20 days after the consent and surrender should take place in 20 days following that notification. For the unexpected circumstances beyond control, the surrender time limit may be extended for 20 days more. Consequently, with the exception of late consent situation, the simplified extradition process takes a maximum of 70 days or the person should be released upon the expiration of this period.

On the other hand, the 1996 EU Extradition Convention is for the ordinary extradition procedure without consent. This convention truly contains radical innovations, such as the abolition of two important obstructions to extradition: political offences and nationality exceptions. Article 4 indicated that no offence may be regarded by the requested member state as a political offence, as an offence connected with a political offence or an offence inspired by political motives. Likewise, this convention eliminates the nationality exception in Article 7. However, the member states are given opportunity to make reservations to these articles.

Another innovation provided in the 1996 EU Extradition Convention concerned the lapse of time application. The requested state will not be able to refuse the extradition even if its laws have barred the prosecution or punishment (Article 8). Additionally, the previous requirement of authentication of the documents and copies in the extradition procedures has also been taken out (Article 15). In terms of seriousness of the offence, the minimum limits of the punishment were made different for both states: 12 months for the requesting state and 6 months for the requested state (Article 2/1).

The EU conventions contained several modernizing and innovative features and were intended to accelerate and simplify the mechanisms of the 1957 Convention. Unfortunately the reservation clause diminished the practical effects of these provisions to a great extent. More importantly, because the conventions were negotiated in an intergovernmental framework, they have to be ratified by each EU member state. According to Plachta (2003), the 1995 EU Convention was ratified by nine states while

the 1996 EU Convention received only eight ratifications. None of these has been entered into force yet (Peers, 2004).

In order to overcome the inefficiencies of the existing extradition regime, the politicians have begun exploring new solutions and the Council of the EU has started to use “framework decisions,” which do not require national ratification, to address cross-border criminal cooperation (Wagner, 2003). These framework decisions are adopted by the Council of the EU in order to approximate the laws and regulations of the member states. They are binding upon the member states in terms of the result to be achieved but they leave to the national authorities the choice of form and methods (Gregory, 1998).

European Arrest Warrant

The EU member states were not satisfied with the level of cooperation in extradition matters. This became evident with the improvement attempts through the 1995 and 1996 EU Extradition Conventions. Spain, in particular, was experiencing problems with the extraditions of members of the terrorist group Euskadi ta Askatasuna (ETA - Basque Fatherland and Liberty) (Bondia, 2004). As a result, Spain signed a series of bilateral agreements with Italy, France, the U.K., and Belgium in the late 1990s which were based on the mutual recognition of court judgments. This was a new principle in Europe. The Spanish government has continued to further its efforts at the EU level to establish the mutual recognition principal, in which states consider each other’s legal and judicial systems trustworthy enough to recognize any request for extradition without applying the reservations. This new principal entails the abolition of

traditional double criminality rule, thereby making the extradition possible even if the offense is not considered punishable by the requested state (Wagner, 2003).

The politicians, being aware that the enlargement of EU would only make the existing problems in extradition worse, have become increasingly focused on the future development of the extradition system within the EU. The first steps were taken at the Tampere meeting of European Council in October 1999 (Plachta, 2003). During the meeting, it was emphasized that the formal extradition procedure should be abolished among the member states and replaced by a simple transfer of the persons sought. Upon the suggestions of European Commission and the Spanish government, the member states endorsed the principle of mutual recognition as a cornerstone for future judicial cooperation. At the meeting, representatives acknowledged that both the mutual recognition of judicial decisions and judgments, and the approximation of legislation could facilitate and strengthen co-operation between authorities and enhance the judicial protection of individual rights. As a consequence, the approach followed thus far for the modernization of extradition was officially replaced by a revolutionary approach in order to build an area of freedom, security and justice within the EU (Fletcher, 2003; Peers, 2004).

After the events of September 11, 2001, the European Commission rapidly issued a proposal for a Framework Decision establishing a European arrest warrant to supplant the current system of extradition between member states. June 13, 2002, marks a significant date in the modern history of extradition. The Council of the EU adopted the “Framework Decision on the European arrest warrant and the surrender procedures between the Member States” (hereinafter Framework Decision). This

Framework Decision naturally applies only to the EU member states and the existing bilateral and multilateral extradition agreements still utilized for the third (non-EU) countries.

It was commonly believed that 9/11 attacks culminated in acceleration of the adoption of some legal instruments and the European Arrest Warrant (EAW) was the primary response of Europe to the 9/11 terror attacks (Bennathan, 2003; Jimeno-Bulnes, 2003; Peers, 2004; Plachta, 2003).

Why the EAW is a revolution?

(1) Mutual recognition: The most visible feature of the Framework Decision is that the traditional requirement of double criminality, which has been the most prominent barrier to extradition and reflecting the skepticism towards any other state's legal order, has been abolished for certain crimes and replaced with the principle of mutual recognition of court judgments among the EU member states. The mutual recognition system necessitates that the decision of the issuing state (the member state issuing the arrest warrant) takes effect as such within the legal system of the executing state (the member state executing the arrest warrant). Therefore, the executing state loses some of its sovereign power over the full control of the enforcement of criminal decisions in its territory (Wagner, 2003).

Contrary to the prior agreements, the Framework Decision contains a "positive list" of offence types for which the principle of dual criminality has been abolished across the EU for offences carrying at least a three year maximum sentence (Article 2/2). The list consists of 32 types of crimes including: participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and

child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in arms, ammunition and explosives, money laundering, murder, illicit trade in human organs and tissue, sabotage, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, and unlawful seizure of aircraft/ships.

In fact, the list contains more than thirty-two offences as some points cover more than one offence. Moreover, the Council of the EU is authorized to add other crimes to the list. It should be emphasized that the double criminality requirement still prevails for offences which are not on this list and which are below the 3 years' threshold.

There has been some criticism concerning the “positive list”. Some people believe that these 32 crime types for which double criminality has been eliminated are too vague. For example, sabotage is in the list but what exactly that means is still being debated. The same is true for racism and xenophobia.

(2) No political involvement: In traditional extradition procedures, the final decision as to whether or not to surrender the person is a political decision. Though courts have been involved in this procedure, their role is usually limited to rendering an opinion on the admissibility of extradition in legal terms. Courts have thus far been unable to prevent political intervention particularly in high profile cases. The Framework Decision is designed to terminate any political safe heavens within the EU by abolishing the political stage of extradition. Article 1 of the Framework Decision clearly says that “the European arrest warrant is a judicial decision…”

Likewise, Article 6 of the Framework Decision defines the issuing and executing judicial authorities and lays down “the executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.” The judicial authorities are the only authorized bodies which can issue, and/or refuse the execution of the EAWs (Article 3 and 4). The extradition, thus, has become simply a judicial process which allows for direct communication between the issuing and the executing judicial authorities (Article 9). More importantly, it is up to the executing judicial authority to decide whether the person is to be surrendered or not (Article 15).

The Framework Decision only allows the designation of a central authority – an administrative body – to assist the competent judicial authorities in administrative transmission and reception of EAWs (Article 7).

(3) Surrender of nationals: The Framework Decision makes it impossible for any member state to refuse to surrender one of its citizens who has committed a crime in another EU state solely on the grounds of nationality. This approach was based on the concept of the “EU citizenship.” Because nationality is no more an exception for extradition, the aut dedere aut judicare (either extradite or prosecute) principle does not apply. On the other hand, in accordance with Article 5/3 of the Framework Decision, member states are able to apply conditions for the return of their nationals or residents – after being heard – back to the executing state in order to serve their sentence. It is considered that by imprisoning the citizens or residents in their own country, their reintegration to the society will be more easily facilitated.

(4) Faster procedure: The Framework Decision imposes short time limits on both the execution of the EAW and the actual surrender of the requested person. The states are required to give a final decision concerning the execution of the EAW within ten days if the requested person consents to his surrender (a kind of simplified extradition procedure) or within 60 days in other cases (Article 17/2-3). In case the EAW cannot be executed within these time limits, the period may be extended by a further 30 days (Article 17/4). After the final decision, the requested person must be surrendered within a ten day period which can be prolonged ten more days due to the circumstances beyond control (Article 23/2-3).

When the exceptional circumstances are disregarded, the person should be surrendered no later than 20 days after consent has been given by the person. If there is no consent, the person should be surrendered within 70 days after the arrest.

(5) Simpler procedure: The Framework Decision contributes to simplifying the process by providing for an alternative mechanism rather than relying on the traditional diplomatic channels. The issuing judicial authority may submit the EAW directly to the executing judicial authority when the location of the requested person is known. Also, telecommunications systems of the European Judicial Network may be used, or a Schengen Information System (SIS) alert may be issued (Article 9-10). Interpol channel may also be used as well to transmit an EAW in accordance with Article 10/3 when it is not possible to call on the services of the SIS. Europol has not been given any active role in this mechanism (Plachta, 2003).

(6) Political offense: Political offence exception was eliminated in the 1996 EU Extradition Convention. That decision remains the same in the Framework Decision. The idea behind this is based on the fact that the EU is established on common democratic ideas and any attack against the political order of any of their members is taken as an attack against all EU democratic values. In other words, any threat against democratic structure of a single EU member state is considered as a threat for whole EU. Therefore, political offenses are no longer exempted from extradition.

(7) Human rights: The Framework Decision appears to be different from traditional extradition agreements regarding the human rights issues. At the beginning of the Framework Decision, it is said that "no person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Convictions in absentia, though, are not classified as grounds for refusal in the Framework Decision, the executing states are allowed to ask for a guarantee from the issuing state that the convicted - after the surrender - will be give an opportunity to apply for a retrial of the case and to be present at the judgment (Article 5/1).

Likewise, if the offence is punishable by a life sentence, the executing state may insist, as a condition of executing the arrest warrant, that if sentenced to life, the accused person will have a right to have his personal situation reconsidered upon request or at the latest after 20 years (Article 5/2). As the death penalty has been abolished in all EU member states, there is no mention of the death penalty in the Framework Decision.

In order to ensure that the arrested person's fundamental rights are respected, the Framework Decision asks executing states to inform the arrested person of the warrant and its content, and about the possibility of consenting the surrender. Moreover, it clearly requires the executing states to provide for a legal counsel and, if need be, an interpreter for the person under arrest (Article 11).

(8) Speciality principle: The Framework Decision represents yet another attempt to eliminate one of the fundamental principles of extradition, the rule of speciality. In the Framework Decision, consent of the executing state is presumed to have been given for the prosecution of an offence committed prior to the surrender other than that for which the person was surrendered, unless otherwise stated by the executing state (Article 27). In other words, while the consent lacks in the traditional system, the Framework Decision suggest that the consent is implicit.

This new approach has been criticized for being open to abuses. An issuing state, for example, might request extradition for a serious offence and then drop those charges once extradition has been completed. The issuing state might charge that person with certain crimes which it could not have obtained extradition for, thereby circumventing any refusal to extradite on any grounds.

Grounds for non-execution of the EAW

According to Article 3 of the Framework Decision, the execution of the EAW should be refused in the following cases:

1. Amnesty: When the offence is covered by amnesty in the executing state where that state had jurisdiction to prosecute the offence,

2. Ne bis in idem principle: If the requested person has been finally judged and sentenced by a member state in respect of the same acts, and

3. If the person may not be held criminally responsible owing to his age under the law of the executing state.

The grounds for optional refusal explained in Article 4 include:

1. Double criminality: For acts which fall outside the list of 32 types of specific offences provided in Article 2/2 of the Framework Decision,

2. Ne bis in idem principle: (a) If the person is prosecuted in the executing state for the same act; (b) if the judicial authorities of the executing state decided not to prosecute the same offence or to stop proceedings, or if the person judged in a member state and this judgment prevents further proceedings; (c) if the person has been finally judged by a third state for the same act,

3. Lapse of time: Where the prosecution or punishment is statute-barred under the law of the executing state,

4. When there is a conviction for a national or a resident of the executing state and it undertakes to execute this conviction,

5. Place of commission: (a) If an offence is regarded by the law of the executing state as having been committed in whole or in part in the territory of the executing state; (b) an offence has been committed outside the territory of the issuing state and the law of the executing state does not allow prosecution for the same offence when committed outside its territory.

In terms of the seriousness of the offence, an EAW may be issued for any act punishable in the issuing state by a period of at least twelve months or, where a

sentence has already been passed, for at least four months (Article 2); however, there is no reference to the law of the executing state.

Another important point is that, upon the statements made by France, Italy, and Austria on the adoption of the Framework Decision, these three member states decided to apply the Framework Decision non-retroactively. This means that for the crimes committed before November 1, 1993 (France) and before August 7, 2002 (Italy and Austria) the extradition requests should be done in accordance with the old extradition system.

Application of Framework Decision

The EAW is really a radical amendment of the existing extradition procedures and a significant development in the fight against transnational crime. To what extent will the implementation of the EAW be a success? Will mutual recognition really work? Will the enlargement bring problems in the implementation? Is approximation of laws a more useful method than mutual recognition to achieve a closer judicial cooperation? Many similar questions have been raised about the application of the Framework Decision.

The adaptation process to the new extradition system has been troublesome for many EU member states. Although the EAW was supposed to enter into force on January 1, 2004 among 15 EU member states (Article 31), seven of them failed to comply with the Framework Decision because of the transitional difficulties. Belgium, Denmark, Ireland, Finland, Spain, Sweden, Portugal and the U.K. were successful in the integration process. Likewise, only half of the newly acceded states implemented the EAW on time, by May 1, 2004. The Czech Republic and Germany joined the group

after an almost eight month delay and the last EU member state, Italy, eventually applied EAW on May 14, 2005.

Even if the transition period was problematic, the overall evaluations prove the efficiency of the Framework Decision. For example, European Commission Report dated February 23, 2005 confirms that the surrender process become totally judicial and has provided the provisional numbers for the first eight months to emphasize the effectiveness of the EAW. The numbers are as follows: 2,603 warrants issued, 653 persons arrested, and 104 persons surrendered.

As to the surrender of nationals, the Commission Report says that most member states, except Ireland, Slovakia, and the U.K. have preferred that the sentence should be carried out on their territory. Furthermore, some states refused the surrender on the grounds that are not included in the Framework Decision. These have been things such as political reasons or national security concerns.

According to the Commission Report, the average time taken to execute a warrant has decreased from more than nine months to 43 days. The average time is 13 days where consent for surrender was given by the individual. It is concluded that although 10 member states are not applying the EAW sufficiently, its effectiveness and speed are favorable (European Commission, 2005).

Comparison between 1957 European Convention on Extradition and European Arrest Warrant

In this part, the traditional and the new extradition systems are compared. The traditional system, 1957 European Convention on Extradition and its protocols, was used among the EU member states up until 2004 when it was replaced by EAW. The

new system abolished all previous extradition agreements among the EU member states. However, 25 states are still using the traditional extradition procedure in their relations with the third (non-EU) countries.

Two tables are presented to display the differences. The first one includes grounds for the refusal of the extradition. While some of these grounds are classified as barriers to extraditions process, the rest are regarded as positive from human rights perspective. The second table displays other important differences between the extradition procedures.

(1) Double criminality: 1957 Convention requires that the offence must be punishable under the laws of the requesting party and of the requested party (Article 2/1). This double criminality rule has been abolished by the EAW for 32 types of crimes (Article 2/2) and replaced with the principle of mutual recognition of court judgments among the EU members.

(2) Political crime: 1957 Convention prohibits extradition for the offence that is considered by the requested party as a political crime or as an offence connected with political offence (Article 3/1). Although the definition of political crime was narrowed with the First Protocol of 1975 and European Convention on the Suppression of Terrorism of 1977, the political offence clause remained as a mandatory ground for refusal in traditional system. The EAW does not refer to political offence thereby abolishes it.

(3) Military crime: Extradition for the offences under military law is not allowed in 1957 Convention (Article 4); however, there is no mention in the EAW.

(4) Nationality: 1957 Convention indicates that contracting parties have right to refuse extradition of its nationals (Article 6). In practice, this optional provision is always

applied to reject the extradition request because in most civil law countries extradition of own nationals is strictly banned with the constitutions or other laws. The EAW, on the contrary, does not have any provision restricting the extradition of national. But the executing state may apply conditions for the return of their nationals or residents – after being heard – back to the executing state in order to serve their sentence (Article 5/3).

(5) Death penalty: When death penalty is not provided or not normally executed in the requested state, the 1957 Convention provides an option to refuse extradition for a crime which is punishable by death unless the requesting state gives sufficient assurance that the death penalty will not be executed (Article 10). In normal circumstances no EU state imposes death penalty. Also, at the beginning of the Framework Decision, it was mentioned that no one should be surrendered to a state where there is a serious risk that he or she will be subjected to the death penalty.

(6) Lapse of time: 1957 Convention does not allow extradition when prosecution or punishment is barred by the laws of either the requesting or the requested states (Article 10). The EAW, on the other hand, only takes into consideration the laws of the executing state. When the offence falls within the jurisdiction of the executing state and prosecution or punishment of the requested person is statute-barred, that state may refuse to surrender the person (Article 4/4).

(7) Seriousness of crime: The offence should be punishable under the laws of both requesting and requested states for a maximum period of at least one year, and if already convicted, the punishment should be at least four months according to 1957 Convention (Article 2/1). The thresholds are same in the EAW; however, it only refers to the laws of issuing state (Article 2).

(8) Ne bis in idem: States may take into consideration any judicial proceedings initiated for the same offence subject to extradition request in order to prevent requested person from double jeopardy. As the results of these proceedings may vary, such as acquittal or conviction, the decisions of the requested/executing states may also vary accordingly. Shortly, both extradition systems apply ne bis in idem rule as mandatory or optional grounds for refusal in pursuant with the judicial proceedings concluded for the same offence.

(9) Discrimination: According to 1957 Convention, extradition will be refused when the requested state has substantial grounds for considering that the extradition request has been made because of the person's race, religion, nationality or political opinion (Article 3/2). The Framework Decision also have similar attitude towards discrimination but further includes sex, ethnic origin, language, sexual orientation and person's position to the clause.

(10) Life sentence: 1957 Convention does not refer to life sentences. On the contrary, if the offence is punishable by life sentence, the EAW enables the executing state to surrender the person on the condition that the issuing state has provisions in its legal system for a review of the penalty on the request or at least after 20 years (Article 5/2).

(11) Judgment in absentia: Second Additional Protocol of 1957 Convention takes judgment in absentia as an optional ground for refusal (Article 3). Although the convictions rendered in absentia are not classified as a ground for refusal in the EAW, the executing states are allowed to ask guarantee from the issuing state that the

convicted - after the surrender - will be give an opportunity to apply for a retrial of the case and to be present at the judgment (Article 5/1).

Table 2

Grounds for Refusal

			1957 European Convention on Extradition	European Arrest Warrant
NEGATIVE Barriers to extradition	Double criminality		+	- **
	Political crime		+	-
	Military crime		+	-
	Nationality		+ (optional)	-
	Lapse of time		+	+ (optional)
	Seriousness of the crime (at least one year or if convicted, at least four months)	in requesting/ issuing state	+	+
		in requested/ executing state	+	-
POSITIVE Grounds for refusal	Ne bis in idem (double jeopardy)		+	+
	Discrimination on grounds of ethnic origin, race, sex, or status		+	+
	Death penalty		+ (optional)	+
	Life sentence		-	g
	Judgment in absentia		+ (optional)	g

(+) Exists (-) Non-exists
(g) Guarantee may be required
(**) For 32 crime types if offence is punishable in issuing state at least three years

(12) Political intervention: In traditional system, the administration is a part of decision making mechanism for extradition. 1957 Convention addresses to contracting party (i.e., a contracting party shall refuse …) rather than addressing to judicial authorities. The EAW completely abolishes the political intervention. It defines issuing and executing judicial authorities and directly addresses to these authorities (i.e., the executing judicial authority may refuse …)

(13) Rule of speciality: 1957 Convention restricts any judicial process in the requesting state for the offences committed before the surrender except for which the person was extradited. That person may only be proceeded against if the requested state gives consent or if the person does not leave the territory of requesting state in a certain period (Article 14). The EAW eliminates this speciality rule. It says that the consent is presumed to have been given for the prosecution and sentencing for an offence committed prior to the surrender other than that for which s/he was surrendered (Article 27).

(14) Direct communication: In traditional extradition procedure, the official extradition requests are generally submitted via diplomatic channels (Article 12). The Ministry of Justice of the requesting party may also address the extradition requests to its counterpart (Article 5 of Second Protocol). In terms of provisional arrest requests for extradition, the competent authorities of the requested state are allowed to submit them direct by post or telegraph; however, in practice, such provisional arrest requests (i.e., red notice and diffusion message in the same nature) are sent through Interpol channel,

and in some particular cases, through diplomatic channels (Article 16). Indeed the local judicial authorities do not directly communicate with their counterparts in other states. The EAW allows for direct communication between the issuing and the executing judicial authorities. For example, when the place of the wanted person is known, the issuing judicial authority may directly transmit the EAW to the executing judicial authority (Article 9).

(15) Simplified extradition: Though 1957 Convention does not arrange simplified procedure, the EAW adopts it under the title of “consent to surrender” (Article 13).

(16) Time limits: 1957 Convention does not limit the requested state to a certain time period to reach a decision on extradition. It is also not established how long the person can be kept in detention in requested state after the extradition has been approved. The Framework Decision imposes short time limits on both the execution of the EAW (Article 17) and the actual surrender of the requested person (Article 23).

(17) Human rights: There is no provision in 1957 Convention about human rights issues. But the attitude on human rights has been established and declared at the beginning of the Framework Decision. It emphasizes that no one should be extradited to a state where there is a serious risk that s/he would be subjected to torture or other inhuman or degrading treatment or punishment. Moreover, the EAW clearly requires the executing states to provide for a legal counsel and, if need be, an interpreter to the person under arrest (Article 11).

Table 3

Other Differences between two Extradition Systems

		1957 European Convention on Extradition	European Arrest Warrant
Political intervention		+	-
Rule of speciality		+	-
Direct communication between judicial authorities		-	+
Simplified extradition		-	+
Time limit for	extradition decision	-	+
	surrender	-	+
Human rights concerns i.e. torture, degrading treatment		-	+
(+) Exists (-) Non-exists			

The innovations offered by the Framework Decision are likely to be a real panacea for the chronic extradition problems. This new extradition system is based on a high level of mutual trust, mutual recognition, and confidence between the EU member states. It successfully eliminates most of the exceptions to extradition while keeping those which are vital to ensure human rights. It has received support from the politicians even at the cost of losing national sovereignty to some degree. The determined time limits as well as the direct communication and simplified extradition possibilities make the new process very fast, thereby, highly effective. The EU members eventually hold a tool, the EAW, that is fast, simple, workable, immune from political influence, and favorable to the basic human rights.

Conclusion

Extradition is a vital tool in the fight against international criminality. Even if the international police cooperation mechanisms work well, the final word on the extradition request is extremely important because it is the final step in all levels of cooperation. Therefore a failure in extradition makes all other cooperation efforts void. The struggle against TOC can be achieved with the help of effective extradition agreements between the states.

This chapter points out the significant differences between the traditional and new extradition procedures and explained why the EAW is considered revolutionary. The elimination of lasting barriers to extradition, a number of fundamental changes in some extradition rules, and more focus on human rights have improved the methods of extradition in EU. However, the EAW only applies within the territory of the EU and the traditional extradition agreements are still being utilized for the third (non-EU) countries.

CHAPTER 5

CONCLUSION

Summary

High levels of criminal activity affect many aspects of daily life, economic development, and security in every society. The European Union (EU) member states, however, are likely to feel the effects of international criminality more because their unity is essentially based on an economic liveliness and freedoms.

The transnational organized crime (TOC) phenomenon has increased significantly in Europe in the last 15 years and has become a real threat for security and freedoms. Among the reasons for this increase are the disintegration of the former Soviet Union, the collapse of the Berlin Wall, the elimination of internal border controls, globalism and increased economic activity, and immigration from other parts of the world (Shelley, 2002). According to Europol (2003), there are around 4,000 known organized crime (OC) groups in the EU member states. In addition to the indigenous OC groups, some foreign groups such as the Russian, Turkish, and Albanian mafias have gotten several illicit markets under their control in Europe.

The OC groups are highly adaptable and capable of taking advantage of many opportunities. They engage in any kind of illicit activities to gain profits and power. Although some of them solely focus on drug trafficking, others deal in a wide range of criminal activities, including illegal immigration, money laundering, prostitution and arms trafficking. Among all forms of transnational crime, drug trafficking and illegal

immigration seem to be the most lucrative activities for OC groups and the most perilous threats for Europe.

There are a number of routes which are being used for drug trafficking into Europe. The most well-known routs are the Balkan Route, the Northern Black Sea Route, and the Eastern Mediterranean Route. All of them start from the poppy cultivation sites in Southwest Asia (Turkish National Police, 2003). A major portion of illegal immigration is also following the same routes.

TOC groups operating in Europe are extremely mobile and act without respect for borders (Van der Heijden, 2003). Therefore, the police of a single country do not have much chance of being successful in controlling TOC unless each nation receives cooperation and assistance from the other nations. The European countries have established a number of international police cooperation organizations and groups such as Interpol, Trevi, Schengen, and Europol.

All of these international policing efforts have been created basically to fight international criminality. Since the early international cooperation attempts, many things, such as organizational structures, mandates, and attitudes, have evolved in this field. However, at the heart of such cooperation is the commitment to improve the arrest rate of criminals beyond their national borders and to improve the extradition process. Today, high-tech communications systems, extensive databases, perfect intelligence and information sharing, and good personal relationships further the levels of international police cooperation and directly contribute to the arrest rates of international criminals. Nonetheless, the problems stemming from the extradition procedure

constitute real, continuing obstacles in the fight against international criminality and can at times make all crime fighting efforts seem fruitless.

European Convention on Extradition of 1957 has been used on the European continent since 1960 and the EU member states replaced this traditional procedure with European Arrest Warrant (EAW) in 2004. The EAW is recognized as revolutionary because it provides solutions to many of the chronic extradition problems.

This new extradition system is based on mutual recognition between the EU member states. It successfully eliminates most of the exceptions to extradition while keeping those which are vital to ensure human rights. The determined time limits as well as the direct communication and simplified extradition possibilities make the new process very fast, thereby, highly effective. The early feedbacks on EAW reveal that its effectiveness and speed are favorable (European Commission, 2005).

Recommendation

There are three important issues which should be identified and underlined in order to understand the TOC phenomenon in Europe.

First, the sharp increase in TOC activities in Europe seems to have arisen from the developments in non-EU countries. The collapse of Soviet Union, ethnic conflicts in Balkans, weak controls at external borders, and illegal immigration have provided good opportunities for OC groups that have in turn proliferated illicit activities in the EU.

Second, the nature of OC activities entails international cooperation and reveals the importance of EU-neighboring countries. The OC groups mostly engage in activities such as drug trafficking, illegal immigration, money laundering, and prostitution. The nature of these illegal activities and the used routes prove that the transnational

criminality targets and moves towards the EU members. According to the *Organised Crime Situation Report of 2001*, the countries on the Balkan Route – Greece, Turkey, "The former Yugoslav Republic of Macedonia", Bulgaria, Romania and Slovenia are very much affected by their geographic positions. They are under pressure from TOC groups delivering drugs, alcohol and cigarettes from eastern parts of Europe to the west. The report also states that illegal immigration and trafficking in human beings follow the same routes (Council of Europe, 2002).

The Council of the EU also recognized the importance of EU-neighboring countries. At its 2411th meeting in February 2002, the Council declared that "…terrorism, money laundering, drug trafficking and trafficking in human beings are priority areas of concern. Cooperation in these areas must be developed and stepped up with the candidate countries, Russia, Ukraine, the USA, Canada and the Balkans."

Third, the OC groups which are dominant in many EU markets have their roots outside of the EU. The Russian, Albanian, Turkish, Romanian and Bulgarian mafias all have spread into many EU countries while maintaining their roots in their respective countries. The reports on OC prepared by Europol and the EU member states emphasize the power and activities of these foreign OC groups. They operate transnational, cooperate with each other, and receive support from migrant population living in the EU.

All of these factors - the circumstances in EU-neighboring countries, the nature of TOC activities, and the structure of OC groups - clearly reveal that the TOC phenomenon is not restricted only to the EU territory. Any fight against them that is limited within the borders of EU may result in limited achievements. In order to root TOC

threat out of Europe, more comprehensive policies that include EU-neighboring countries need to be explored.

It is a fact that the instability and high criminality in the EU-neighboring states directly and swiftly affects the internal security of EU. Indeed, some steps taken by EU suggest that they are well aware of this fact. For example, the EU has concluded common action plans on OC with countries such as Russia and Ukraine; Europol has signed cooperation agreements with Turkey, Russia, Romania, and Bulgaria; and the Council of the EU has encouraged the development of an EU platform for exchange of information and intelligence related to OC originating from the Western Balkans.

However, the problem and its solution lay in the extradition procedure. No matter how great international police cooperation systems are, all of the efforts are dependent on the effective and efficient extradition of criminals. Extradition is a critical part of international policing. The EU member states eventually abandoned the traditional extradition systems due to its problems and created a revolutionary extradition system. However, it has been restricted to use among the EU member states and they continue to apply the slow, problematic traditional extradition convention in their relations with the non-EU states.

OC groups in the EU, which have their roots and strong connections in neighboring states, call for a broad strategy. Actually, both the EU member states and their neighbors fight against the same enemy. This is a win-win situation. When one state destroys one OC group or manages to control drug or illegal immigration routes, these steps directly help other states. But the traditional extradition procedure is slow, contains many exceptions to extradition and is wide open for political intervention. This

traditional procedure weakens the fight against international crime to a great extent all over the Europe. As long as it is used between the EU member states and non-EU states crime fighting will suffer. All European countries need a simple and fast extradition system. The more effective legal tools the states have, the weaker the international criminality is. Therefore, the old clumsy extradition systems should be replaced by a fast and workable extradition procedure. This needs to be done all over the Europe not just among the EU members. All the EU-neighboring states should be invited and encouraged to use this “revolutionary” EAW or a similar extradition procedure.

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